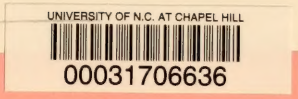
THE LIBRARY OF THE
UNIVERSITY OF
NORTH CAROLINA
AT CHAPEL HILL



THE COLLECTION OF
NORTH CAROLINIANA

C345.1
N87
1995
v. 1



FOR USE ONLY IN

THE NORTH CAROLINA COLLECTION

Form No. A-368, Rev. 8/95

STATE OF NORTH CAROLINA

SESSION LAWS AND RESOLUTIONS

PASSED BY THE

1995 GENERAL ASSEMBLY

AT ITS

REGULAR SESSION 1995

BEGINNING ON

WEDNESDAY, THE TWENTY–FIFTH DAY OF

JANUARY, A.D. 1995

HELD IN THE CITY OF RALEIGH

ISSUED BY
SECRETARY OF STATE RUFUS L. EDMISTEN

PUBLISHED BY AUTHORITY

This publication is printed on permanent, acid–free paper in compliance with the General Statuts of North Carolina.

1590 copies of this public document were printed at a cost of $23.00 per two volume set.

C345.1
N87
1995
V. 1

TABLE OF CONTENTS

Presiding Officers of the 1995 General Assembly v
Executive Branch Officers v
Officers and Members of the Senate vi
Officers and Members of the House vii
Legislative Services Commission ix
Legislative Services Staff Directors ix
Constitution of North Carolina xi
Session Laws Chapters 1
Resolutions 2055
Certification 2071
Executive Orders 2072
Numerical Index 2161
Session Laws Index 2167

TABLE OF CONTENTS

STATE OF NORTH CAROLINA

PRESIDING OFFICERS OF THE 1995 GENERAL ASSEMBLY

DENNIS A. WICKER	President of the Senate	Lee
HAROLD J. BRUBAKER	Speaker of the House of Representatives	Randolph

---

EXECUTIVE BRANCH

(Offices established by the Constitution, filled by election and comprising the Council of State)

JAMES B. HUNT, JR.	Governor	Wilson
DENNIS A. WICKER	Lieutenant Governor	Lee
RUFUS L. EDMISTEN	Secretary of State	Watauga
RALPH CAMPBELL, JR.	Auditor	Wake
HARLAN E. BOYLES	Treasurer	Wake
BOB R. ETHERIDGE	Superintendent of Public Instruction	Harnett
MICHAEL F. EASLEY	Attorney General	Brunswick
JAMES A. GRAHAM	Commissioner of Agriculture	Rowan
HARRY E. PAYNE, JR.	Commissioner of Labor	New Hanover
JAMES E. LONG	Commissioner of Insurance	Alamance

The political affiliation of each legislator and member of the Council of State listed on this and the following pages is Democratic unless designated Republican by the abbreviation (R).

G.S. 147–16.1 authorizes publication of Executive Orders of the Governor in the Session Laws of North Carolina. Executive Orders from Governor Hunt are carried in the appendix to this volume.

1995 GENERAL ASSEMBLY

SENATE OFFICERS

Name	*Position*	*Address*
Dennis A. Wicker	President	Sanford, Lee County
Marc Basnight	President Pro Tempore	Manteo, Dare County
R. C. Soles, Jr.	Deputy President Pro Tempore	Tabor City, Columbus County
Sylvia M. Fink	Principal Clerk	Raleigh, Wake County
Leroy Clark, Jr.	Reading Clerk	Wendell, Wake County
Cecil Goins	Sergeant–at–Arms	Raleigh, Wake County

SENATORS

District		Name	County	Address
1		Marc Basnight	Dare	Manteo
2		Frank W. Ballance, Jr.	Warren	Warrenton
3		Beverly M. Perdue	Craven	New Bern
4		Patrick J. Ballentine (R)	New Hanover	Wilmington
5		Charles W. Albertson	Duplin	Beulaville
6		R. L. Martin	Pitt	Bethel
7		Luther Henry Jordan, Jr.	New Hanover	Wilmington
8		John Kerr III	Wayne	Goldsboro
9		Ed N. Warren	Pitt	Greenville
10		Roy A. Cooper III	Nash	Rocky Mount
11		James D. Speed	Franklin	Louisburg
12		Don W. East (R)	Surry	Pilot Mountain
12		Virginia Foxx (R)	Watauga	Banner Elk
13		Wilbur P. Gulley	Durham	Durham
13		Jeanne H. Lucas	Durham	Durham
14		Henry E. McCoy (R)	Wake	Raleigh
14		J. K. Sherron, Jr.	Wake	Raleigh
15	*	Daniel E. Page (R)	Harnett	Coats
16		Fred M. Hobbs (R)	Moore	Southern Pines
16		Tenna S. Little (R)	Moore	Southern Pines
17		J. Richard Conder	Richmond	Rockingham
17		Aaron W. Plyler	Union	Monroe
18		R. C. Soles, Jr.	Columbus	Tabor City
19		Robert G. Shaw (R)	Guilford	Greensboro
20		Hamilton C. Horton (R)	Forsyth	Winston–Salem
20		James Mark McDaniel (R)	Forsyth	Pfafftown
21		Hugh Webster (R)	Caswell	Yanceyville
22		Fletcher L. Hartsell, Jr. (R)	Cabarrus	Concord
23		Paul S. Smith (R)	Rowan	Salisbury
24		Anthony E. Rand	Cumberland	Fayetteville
25		David W. Hoyle	Gaston	Dallas
26		Austin M. Allran (R)	Catawba	Hickory
27		Donald R. Kincaid (R)	Caldwell	Lenoir
27		Dan R. Simpson (R)	Burke	Morganton
28		R. L. Clark (R)	Buncombe	Asheville
28		Jesse I. Ledbetter (R)	Buncombe	Asheville
29		J. Clark Plexico	Henderson	Hendersonville
30		David R. Parnell	Robeson	Parkton
31		William N. Martin	Guilford	Greensboro
32		Thomas B. Sawyer, Sr. (R)	Guilford	Greensboro
33		Charlie Smith Dannelly	Mecklenburg	Charlotte
34		T. L. Odom	Mecklenburg	Charlotte
35		John Gerald Blackmon (R)	Mecklenburg	Charlotte
36		John H. Carrington (R)	Wake	Raleigh
37		Dennis Davis (R)	Cleveland	Lattimore
38		Betsy L. Cochrane (R)	Davie	Advance
39		James Forrester (R)	Gaston	Stanley
40		Leslie Winner	Mecklenburg	Charlotte
41		C. R. Edwards	Cumberland	Fayetteville
42		Robert C. Carpenter (R)	Macon	Franklin

* Elected March 28, 1995

HOUSE OFFICERS

Name	*Position*	*Address*
HAROLD J. BRUBAKER	Speaker	Asheboro, Randolph County
CAROLYN B. RUSSELL	Speaker Pro Tempore	Goldsboro, Wayne County
DENISE G. WEEKS	Principal Clerk	Willow Springs, Wake County
JOAN N. DANIELEY	Reading Clerk	Winston–Salem, Forsyth County
CLYDE COOK, JR.	Sergeant–at–Arms	Garner, Wake County

REPRESENTATIVES

District		Name	County	Address
1		W. C. OWENS, JR.	Pasquotank	Elizabeth City
2		ZENO L. EDWARDS, JR. (R)	Beaufort	Washington
3		JOHN M. NICHOLS (R)	Craven	New Bern
4	*	MACON S. SNOWDEN (R)	Carteret	Pine Knoll Shores
4	**	JOHNATHAN ROBINSON (R)	Carteret	Stacy
4		JEAN ROUSE PRESTON (R)	Carteret	Emerald Isle
5		HOWARD J. HUNTER, JR.	Northampton	Conway
6		RICHARD EUGENE ROGERS	Martin	Williamston
7		L. W. LOCKE	Halifax	Enfield
8		LINWOOD E. MERCER	Pitt	Farmville
9		M. W. ALDRIDGE (R)	Pitt	Greenville
10		CYNTHIA B. WATSON (R)	Duplin	Rose Hill
11		LOUIS M. PATE, JR. (R)	Wayne	Mount Olive
12		EDWARD C. BOWEN	Sampson	Harrells
13		DAN MCCOMAS (R)	New Hanover	Wilmington
14		DEWEY L. HILL	Columbus	Whiteville
14		E. DAVID REDWINE	Brunswick	Shallotte
15		J. SAM ELLIS (R)	Wake	Raleigh
16		DOUGLAS Y. YONGUE	Scotland	Laurinburg
17		MARY E. MCALLISTER	Cumberland	Fayetteville
17		LARRY SHAW	Cumberland	Fayetteville
18		JOHN W. HURLEY	Cumberland	Fayetteville
18		BILLY RICHARDSON	Cumberland	Fayetteville
19		WILLIS BROWN	Harnett	Buies Creek
19		DONALD DAVIS (R)	Harnett	Erwin
20		BILLY J. CREECH (R)	Johnston	Clayton
21		DANIEL T. BLUE, JR.	Wake	Raleigh
22		JIM CRAWFORD	Granville	Oxford
22		MICHAEL S. WILKINS	Person	Roxboro
23		PAUL LUEBKE	Durham	Durham
23		H. M. MICHAUX, JR.	Durham	Durham
23		GEORGE W. MILLER, JR.	Durham	Durham
24		ANNE C. BARNES	Orange	Chapel Hill
24		JOE HACKNEY	Orange	Chapel Hill
25		CARY D. ALLRED (R)	Alamance	Burlington
25		KEN MILLER (R)	Alamance	Mebane
25		DENNIS REYNOLDS (R)	Alamance	Burlington
26		ALMA ADAMS	Guilford	Greensboro
27		STEVE WOOD (R)	Guilford	High Point
28		FLOSSIE BOYD–MCINTYRE	Guilford	Jamestown
29		JOANNE W. BOWIE (R)	Guilford	Greensboro
30		ARLIE F. CULP (R)	Randolph	Ramseur
31		RICHARD T. MORGAN (R)	Moore	Pinehurst
32		HUGH A. LEE	Richmond	Rockingham
33		FOYLE HIGHTOWER, JR.	Anson	Wadesboro
34		FERN SHUBERT (R)	Union	Marshville
35		CHARLOTTE A. GARDNER (R)	Rowan	Salisbury
36		JIM BLACK	Mecklenburg	Matthews
37		PAUL R. MCCRARY	Davidson	Lexington
38		HAROLD J. BRUBAKER (R)	Randolph	Asheboro
39		LYONS GRAY (R)	Forsyth	Winston–Salem
40		REX L. BAKER (R)	Stokes	King
40		WILLIAM S. HIATT (R)	Surry	Mt. Airy
40		GENE WILSON (R)	Watauga	Boone
41		JOHN W. BROWN (R)	Wilkes	Elkin

41	GEORGE M. HOLMES (R)	Yadkin	Hamptonville
42	FRANK MITCHELL (R)	Iredell	Olin
43	C. ROBERT BRAWLEY (R)	Iredell	Mooresville
44	JOHN R. GAMBLE, JR.	Lincoln	Lincolnton
45	CHERIE KILLIAN BERRY (R)	Catawba	Newton
45	JOE L. KISER (R)	Lincoln	Vale
46	CHARLES F. BUCHANAN (R)	Mitchell	Green Mountain
46	GREGG THOMPSON (R)	Mitchell	Spruce Pine
47	WALTER G. CHURCH, SR.	Burke	Valdese
48	JACK HUNT	Cleveland	Shelby
48	DEBBIE A. CLARY (R)	Cleveland	Shelby
48	JOHN WEATHERLY (R)	Cleveland	Kings Mountain
49	ROBERT C. HUNTER	McDowell	Marion
50	LARRY T. JUSTUS (R)	Henderson	Hendersonville
51	LANIER CANSLER (R)	Buncombe	Asheville
51	LARRY R. LINNEY (R)	Buncombe	Asheville
51	WILMA SHERRILL (R)	Buncombe	Asheville
52	CHARLES M. BEALL	Haywood	Clyde
52	LISTON B. RAMSEY	Madison	Marshall
53	JAMES C. CARPENTER (R)	Macon	Otto
54	JOHN B. MCLAUGHLIN	Mecklenburg	Newell
55	W. EDWIN MCMAHAN (R)	Mecklenburg	Charlotte
56	MARTHA ALEXANDER	Mecklenburg	Charlotte
57	CONNIE WILSON (R)	Mecklenburg	Charlotte
58	RUTH M. EASTERLING	Mecklenburg	Charlotte
59	W. PETE CUNNINGHAM	Mecklenburg	Charlotte
60	BEVERLY EARLE	Mecklenburg	Charlotte
61	CHARLES B. NEELY, JR. (R)	Wake	Raleigh
62	DAVID MINER (R)	Wake	Cary
63	ARLENE PULLEY (R)	Wake	Raleigh
64	BOB HENSLEY	Wake	Raleigh
65	RICK EDDINS (R)	Wake	Raleigh
66	LARRY W. WOMBLE	Forsyth	Winston–Salem
67	WARREN C. (PETE) OLDHAM	Forsyth	Winston–Salem
68	W. M. IVES (R)	Transylvania	Brevard
69	J. SHAWN LEMMOND (R)	Mecklenburg	Matthews
70	MILTON F. FITCH, JR.	Wilson	Wilson
71	NORRIS TOLSON	Edgecombe	Pinetops
72	GENE ARNOLD (R)	Nash	Rocky Mount
73	P. WAYNE SEXTON (R)	Rockingham	Stoneville
74	JULIA CRAVEN HOWARD (R)	Davie	Mocksville
75	ALEX WARNER	Cumberland	Hope Mills
76	W. W. DICKSON (R)	Gaston	Gastonia
77	CAROLYN B. RUSSELL (R)	Wayne	Goldsboro
78	STAN FOX	Granville	Oxford
79	WILLIAM WAINWRIGHT	Craven	Havelock
80	WILLIAM ROBERT GRADY (R)	Onslow	Jacksonville
81	TIMOTHY N. TALLENT (R)	Cabarrus	Concord
82	BOBBY HAROLD BARBEE, SR. (R)	Stanley	Locust
83	EUGENE MCCOMBS (R)	Rowan	Faith
84	MICHAEL DECKER (R)	Forsyth	Walkertown
85	RONNIE SUTTON	Robeson	Pembroke
86	WILLIAM T. CULPEPPER, III	Chowan	Edenton
87	FRANCES M. CUMMINGS (R)	Robeson	Lumberton
88	THERESA H. ESPOSITO (R)	Forsyth	Winston–Salem
89	JOHN A. COCKLEREECE (R)	Guilford	Greensboro
89	JOANNE SHARPE (R)	Guilford	Greensboro
90	ROBERT C. HAYES (R)	Cabarrus	Concord
91	GEORGE S. ROBINSON (R)	Caldwell	Lenoir
92	J. RUSSELL CAPPS (R)	Wake	Raleigh
93	JOHN RAYFIELD (R)	Gaston	Belmont
94	JERRY C. DOCKHAM (R)	Davidson	Denton
95	LEO DAUGHTRY (R)	Johnston	Smithfield
96	EDD NYE	Bladen	Elizabethtown
97	JERRY BRASWELL	Wayne	Goldsboro
98	THOMAS E. WRIGHT	New Hanover	Wilmington

* Deceased April 27, 1995
** Appointed to fill unexpired term May 15, 1995

LEGISLATIVE SERVICES COMMISSION

SENATE PRESIDENT PRO TEMPORE MARC BASNIGHT, *Cochairman*

HOUSE SPEAKER HAROLD BRUBAKER, *Cochairman*

SEN. JOHN H. CARRINGTON
SEN. J. RICHARD CONDER
SEN. WILBER P. GULLEY
SEN. TENNA S. LITTLE
SEN. R. L. MARTIN
SEN. DAVID R. PARNELL

REP. GENE ARNOLD
REP. C. ROBERT BRAWLEY
REP. WALTER C. CHURCH
REP. LYONS GRAY
REP. ROBERT C. HAYES
REP. MARY E. MCALLISTER

LEGISLATIVE SERVICES STAFF DIRECTORS

GEORGE R. HALL, JR.	Legislative Administrative Officer
GERRY F. COHEN	Director of Bill Drafting
THOMAS L. COVINGTON	Director of Fiscal Research
DON F. FULFORD	Director of Legislative Information Systems
TERRENCE D. SULLIVAN	Director of Research
J. MICHAEL MINSHEW	Building Superintendent and Chief of Security

PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof and for the better government of this State, ordain and establish this Constitution.

ARTICLE I

DECLARATION OF RIGHTS

That the great, general, and essential principles of liberty and free government may be recognized and established, and that the relations of this State to the Union and government of the United States and those of the people of this State to the rest of the American people may be defined and affirmed, we do declare that:

Section 1. *The equality and rights of persons.*

We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Sec. 2. *Sovereignty of the people.*

All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Sec. 3. *Internal government of the State.*

The people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering or abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right shall be exercised in pursuance of law and consistently with the Constitution of the United States.

Sec. 4. *Secession prohibited.*

This State shall ever remain a member of the American Union; the people thereof are part of the American nation; there is no right on the part of this State to secede; and all attempts, from whatever source or upon whatever pretext, to dissolve this Union or to sever this Nation, shall be resisted with the whole power of the State.

Sec. 5. *Allegiance to the United States.*

Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force.

Sec. 6. *Separation of powers.*

The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.

Sec. 7. *Suspending laws.*

All power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people, is injurious to their rights and shall not be exercised.

Sec. 8. *Representation and taxation.*

The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given.

Sec. 9. *Frequent elections.*

For redress of grievances and for amending and strengthening the laws, elections shall be often held.

Sec. 10. *Free elections.*

All elections shall be free.

Sec. 11. *Property qualifications.*

As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office.

Sec. 12. *Right of assembly and petition.*

The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances; but secret political societies are dangerous to the liberties of a free people and shall not be tolerated.

Sec. 13. *Religious liberty.*

All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.

Sec. 14. *Freedom of speech and press.*

Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.

Sec. 15. *Education.*

The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Sec. 16. *Ex post facto laws.*

Retrospective laws, punishing acts committed before the existence of such laws and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, and therefore no ex post facto law shall be enacted. No law taxing retrospectively sales, purchases, or other acts previously done shall be enacted.

Sec. 17. *Slavery and involuntary servitude.*

Slavery is forever prohibited. Involuntary servitude, except as a punishment for crime whereof the parties have been adjudged guilty, is forever prohibited.

Sec. 18. *Court shall be open.*

All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

Sec. 19. *Law of the land; equal protection of the laws.*

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

Sec. 20. *General warrants.*

General warrants, whereby any officer or other person may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted.

Sec. 21. *Inquiry into restraints on liberty.*

Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the restraint if unlawful, and that

remedy shall not be denied or delayed. The privilege of the writ of habeas corpus shall not be suspended.

Sec. 22. *Modes of prosecution.*

Except in misdemeanor cases initiated in the District Court Division, no person shall be put to answer any criminal charge but by indictment, presentment, or impeachment. But any person, when represented by counsel, may, under such regulations as the General Assembly shall prescribe, waive indictment in noncapital cases.

Sec. 23. *Rights of accused.*

In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

Sec. 24. *Right of jury trial in criminal cases.*

No person shall be convicted of any crime but by the unanimous verdict of a jury in open court. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.

Sec. 25. *Right of jury trial in civil cases.*

In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.

Sec. 26. *Jury service.*

No person shall be excluded from jury service on account of sex, race, color, religion, or national origin.

Sec. 27. *Bail, fines, and punishments.*

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Sec. 28. *Imprisonment for debt.*

There shall be no imprisonment for debt in this State, except in cases of fraud.

Sec. 29. *Treason against the State.*

Treason against the State shall consist only of levying war against it or adhering to its enemies by giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same

overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture.

Sec. 30. *Militia and the right to bear arms.*

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice.

Sec. 31. *Quartering of soldiers.*

No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

Sec. 32. *Exclusive emoluments.*

No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

Sec. 33. *Hereditary emoluments and honors.*

No hereditary emoluments, privileges, or honors shall be granted or conferred in this State.

Sec. 34. *Perpetuities and monopolies.*

Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed.

Sec. 35. *Recurrence to fundamental principles.*

A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

Sec. 36. *Other rights of the people.*

The enumeration of rights in this Article shall not be construed to impair or deny others retained by the people.

ARTICLE II

LEGISLATIVE

Section 1. *Legislative power.*

The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.

Sec. 2. *Number of Senators.*

The Senate shall be composed of 50 Senators, biennially chosen by ballot.

Sec. 3. *Senate districts; apportionment of Senators.*

The Senators shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those districts, subject to the following requirements:

(1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the district that he represents by the number of Senators apportioned to that district;

(2) Each senate district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a senate district;

(4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 4. *Number of Representatives.*

The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

Sec. 5. *Representative districts; apportionment of Representatives.*

The Representatives shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements:

(1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Representative represents being determined for this purpose by dividing the population of the district that he represents by the number of Representatives apportioned to that district;

(2) Each representative district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a representative district;

(4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 6. *Qualifications for Senator.*

Each Senator, at the time of his election, shall be not less than 25 years of age, shall be a qualified voter of the State, and shall have resided in the

State as a citizen for two years and in the district for which he is chosen for one year immediately preceding his election.

Sec. 7. *Qualifications for Representative.*

Each Representative, at the time of his election, shall be a qualified voter of the State, and shall have resided in the district for which he is chosen for one year immediately preceding his election.

Sec. 8. *Elections.*

The election for members of the General Assembly shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law.

Sec. 9. *Term of office.*

The term of office of Senators and Representatives shall commence on the first day of January next after their election.

Sec. 10. *Vacancies.*

Every vacancy occurring in the membership of the General Assembly by reason of death, resignation, or other cause shall be filled in the manner prescribed by law.

Sec. 11. *Sessions.*

(1) *Regular Sessions.* The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Neither house shall proceed upon public business unless a majority of all of its members are actually present.

(2) *Extra sessions on legislative call.* The President of the Senate and the Speaker of the House of Representatives shall convene the General Assembly in extra session by their joint proclamation upon receipt by the President of the Senate of written requests therefor signed by three-fifths of all the members of the Senate and upon receipt by the Speaker of the House of Representatives of written requests therefor signed by three-fifths of all the members of the House of Representatives.

Sec. 12. *Oath of members.*

Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States and the Constitution of the State of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives.

Sec. 13. *President of the Senate.*

The Lieutenant Governor shall be President of the Senate and shall preside over the Senate, but shall have no vote unless the Senate is equally divided.

Sec. 14. *Other officers of the Senate.*

(1) *President Pro Tempore - succession to presidency.* The Senate shall elect from its membership a President Pro Tempore, who shall become President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by the Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve until the expiration of his term of office as Senator.

(2) *President Pro Tempore - temporary succession.* During the physical or mental incapacity of the President of the Senate to perform the duties of his office, or during the absence of the President of the Senate, the President Pro Tempore shall preside over the Senate.

(3) *Other officers.* The Senate shall elect its other officers.

Sec. 15. *Officers of the House of Representatives.*

The House of Representatives shall elect its Speaker and other officers.

Sec. 16. *Compensation and allowances.*

The members and officers of the General Assembly shall receive for their services the compensation and allowances prescribed by law. An increase in the compensation or allowances of members shall become effective at the beginning of the next regular session of the General Assembly following the session at which it was enacted.

Sec. 17. *Journals.*

Each house shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly.

Sec. 18. *Protests.*

Any member of either house may dissent from and protest against any act or resolve which he may think injurious to the public or to any individual, and have the reasons of his dissent entered on the journal.

Sec. 19. *Record votes.*

Upon motion made in either house and seconded by one fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the journal.

Sec. 20. *Powers of the General Assembly.*

Each house shall be judge of the qualifications and elections of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be enacted into laws. The two houses may jointly adjourn to any future day or other place. Either house may, of its own motion, adjourn for a period not in excess of three days.

Sec. 21. *Style of the acts.*

The style of the acts shall be: "The General Assembly of North Carolina enacts:".

Sec. 22. *Action on bills.*

All bills and resolutions of a legislative nature shall be read three times in each house before they become laws, and shall be signed by the presiding officers of both houses.

Sec. 23. *Revenue bills.*

No laws shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal.

Sec. 24. *Limitations on local, private, and special legislation.*

(1) Prohibited subjects. The General Assembly shall not enact any local, private, or special act or resolution:

(a) Relating to health, sanitation, and the abatement of nuisances;
(b) Changing the names of cities, towns, and townships;
(c) Authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys;
(d) Relating to ferries or bridges;
(e) Relating to non-navigable streams;
(f) Relating to cemeteries;
(g) Relating to the pay of jurors;
(h) Erecting new townships, or changing township lines, or establishing or changing the lines of school districts;
(i) Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury;
(j) Regulating labor, trade, mining, or manufacturing;

(k) Extending the time for the levy or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability;
(l) Giving effect to informal wills and deeds;
(m) Granting a divorce or securing alimony in any individual case;
(n) Altering the name of any person, or legitimating any person not born in lawful wedlock, or restoring to the rights of citizenship any person convicted of a felony.

(2) *Repeals.* Nor shall the General Assembly enact any such local, private, or special act by partial repeal of a general law; but the General Assembly may at any time repeal local, private, or special laws enacted by it.

(3) *Prohibited acts void.* Any local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void.

(4) *General laws.* The General Assembly may enact general laws regulating the matters set out in this Section.

ARTICLE III
EXECUTIVE

Section 1. *Executive power.*

The executive power of the State shall be vested in the Governor.

Sec. 2. *Governor and Lieutenant Governor: election, term, and qualifications.*

(1) *Election and term.* The Governor and Lieutenant Governor shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) *Qualifications.* No person shall be eligible for election to the office of Governor or Lieutenant Governor unless, at the time of his election, he shall have attained the age of 30 years and shall have been a citizen of the United States for five years and a resident of this State for two years immediately preceding his election. No person elected to the office of Governor or Lieutenant Governor shall be eligible for election to more than two consecutive terms of the same office.

Sec. 3. *Succession to office of Governor.*

(1) *Succession as Governor.* The Lieutenant Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the

office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

(2) *Succession as Acting Governor.* During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant Governor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(3) *Physical incapacity.* The Governor may, by a written statement filed with the Attorney General, declare that he is physically incapable of performing the duties of his office, and may thereafter in the same manner declare that he is physically capable of performing the duties of his office.

(4) *Mental incapacity.* The mental incapacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of two-thirds of all the members of each house of the General Assembly. Thereafter, the mental capacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of a majority of all the members of each house of the General Assembly. In all cases, the General Assembly shall give the Governor such notice as it may deem proper and shall allow him an opportunity to be heard before a joint session of the General Assembly before it takes final action. When the General Assembly is not in session, the Council of State, a majority of its members concurring, may convene it in extra session for the purpose of proceeding under this paragraph.

(5) *Impeachment.* Removal of the Governor from office for any other cause shall be by impeachment.

Sec. 4. *Oath of office for Governor.*

The Governor, before entering upon the duties of his office, shall, before any Justice of the Supreme Court, take an oath or affirmation that he will support the Constitution and laws of the United States and of the State of North Carolina, and that he will faithfully perform the duties pertaining to the office of governor.

Sec. 5. *Duties of Governor.*

(1) *Residence.* The Governor shall reside at the seat of government of this State.

(2) *Information to General Assembly.* The Governor shall from time to time give the General Assembly information of the affairs of the State and recommend to their consideration such measures as he shall deem expedient.

(3) *Budget.* The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor.

The total expenditures of the State for the fiscal period covered by the budget shall not exceed the total of receipts during that fiscal period and the surplus remaining in the State Treasury at the beginning of the period. To insure that the State does not incur a deficit for any fiscal period, the Governor shall continually survey the collection of the revenue and shall effect the necessary economies in State expenditures, after first making adequate provision for the prompt payment of the principal of and interest on bonds and notes of the State according to their terms, whenever he determines that receipts during the fiscal period, when added to any surplus remaining in the State Treasury at the beginning of the period, will not be sufficient to meet budgeted expenditures. This section shall not be construed to impair the power of the State to issue its bonds and notes within the limitations imposed in Article V of this Constitution, nor to impair the obligation of bonds and notes of the State now outstanding or issued hereafter.

(4) *Execution of laws.* The Governor shall take care that the laws be faithfully executed.

(5) *Commander in Chief.* The Governor shall be Commander in Chief of the military forces of the State except when they shall be called into the service of the United States.

(6) *Clemency.* The Governor may grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons. The terms reprieves, commutations, and pardons shall not include paroles.

(7) *Extra sessions.* The Governor may, on extraordinary occasions, by and with the advice of the Council of State, convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

(8) *Appointments.* The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for.

(9) *Information.* The Governor may at any time require information in writing from the head of any administrative department or agency upon any subject relating to the duties of his office.

(10)*Administrative reorganization.* The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment sine die of the session, unless specifically disapproved

by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly.

Sec. 6. *Duties of the Lieutenant Governor.*

The Lieutenant Governor shall be President of the Senate, but shall have no vote unless the Senate is equally divided. He shall perform such additional duties as the General Assembly or the Governor may assign to him. He shall receive the compensation and allowances prescribed by law.

Sec. 7. *Other elective officers.*

(1) *Officers.* A Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) *Duties.* Their respective duties shall be prescribed by law.

(3) *Vacancies.* If the office of any of these officers is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 60 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in this Section. When a vacancy occurs in the office of any of the officers named in this Section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

(4) *Interim officers.* Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to this Section to fill the vacancy and is qualified.

(5) *Acting officers.* During the physical or mental incapacity of any one of these officers to perform the duties of his office, as determined pursuant to this Section, the duties of his office shall be performed by an acting officer who shall be appointed by the Governor.

(6) *Determination of incapacity.* The General Assembly shall by law prescribe with respect to those officers, other than the Governor, whose offices are created by this Article, procedures for determining the physical or mental incapacity of any officer to perform the duties of his office, and for determining whether an officer who has been temporarily incapacitated has sufficiently recovered his physical or mental capacity to perform the

duties of his office. Removal of those officers from office for any other cause shall be by impeachment.

(7) *Special Qualifications for Attorney General.* Only persons duly authorized to practice law in the courts of this State shall be eligible for appointment or election as Attorney General.

Sec. 8. *Council of State.*

The Council of State shall consist of the officers whose offices are established by this Article.

Sec. 9. *Compensation and allowances.*

The officers whose offices are established by this Article shall at stated periods receive the compensation and allowances prescribed by law, which shall not be diminished during the time for which they have been chosen.

Sec. 10. *Seal of State.*

There shall be a seal of the State, which shall be kept by the Governor and used by him as occasion may require, and shall be called "The Great Seal of the State of North Carolina". All grants or commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with "The Great Seal of the State of North Carolina", and signed by the Governor.

Sec. 11. Administrative departments.

Not later than July 1, 1975, all administrative departments, agencies, and offices of the State and their respective functions, powers, and duties shall be allocated by law among and within not more than 25 principal administrative departments so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may, but need not, be allocated within a principal department.

ARTICLE IV
JUDICIAL

Section 1. *Judicial power.*

The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a co-ordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article.

Sec. 2. *General Court of Justice.*

The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration, and shall consist of an Appellate Division, a Superior Court Division, and a District Court Division.

Sec. 3. *Judicial powers of administrative agencies.*

The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice.

Sec. 4. *Court for the Trial of Impeachments.*

The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant Governor is impeached, the Chief Justice shall preside over the Court. A majority of the members shall be necessary to a quorum, and no person shall be convicted without the concurrence of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

Sec. 5. *Appellate division.*

The Appellate Division of the General Court of Justice shall consist of the Supreme Court and the Court of Appeals.

Sec. 6. *Supreme Court.*

(1) *Membership.* The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. In the event the Chief Justice is unable, on account of absence or temporary incapacity, to perform any of the duties placed upon him, the senior Associate Justice available may discharge those duties.

(2) *Sessions of the Supreme Court.* The sessions of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

Sec. 7. *Court of Appeals.*

The structure, organization, and composition of the Court of Appeals shall be determined by the General Assembly. The Court shall have not less than five members, and may be authorized to sit in divisions, or other than en banc. Sessions of the Court shall be held at such times and places as the General Assembly may prescribe.

Sec. 8. *Retirement of Justices and Judges.*

The General Assembly shall provide by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court or courts of the division from which he was retired. The General Assembly shall also prescribe maximum age limits for service as a Justice or Judge.

Sec. 9. *Superior Courts.*

(1) *Superior Court districts.* The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may provide by general law for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.

(2) *Open at all times; sessions for trial of cases.* The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to a calendar of courts promulgated by the Supreme Court. At least two sessions for the trial of jury cases shall be held annually in each county.

(3) *Clerks.* A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. If the office of Clerk of the Superior Court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect, the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an election can be regularly held.

Sec. 10. *District Courts.*

The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint for a term of two years, from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in

the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office.

Sec. 11. *Assignment of Judges.*

The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or specialized duty. The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge.

Sec. 12. *Jurisdiction of the General Court of Justice.*

(1) *Supreme Court.* The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over "issues of fact" and "questions of fact" shall be the same exercised by it prior to the adoption of this Article, and the Court may issue any remedial writs necessary to give it general supervision and control over the proceedings of the other courts. The Supreme Court also has jurisdiction to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission.

(2) *Court of Appeals.* The Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe.

(3) *Superior Court.* Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of the Superior Court shall have such jurisdiction and powers as the General Assembly shall prescribe by general law uniformly applicable in every county of the State.

(4) *District Courts; Magistrates.* The General Assembly shall, by general law uniformly applicable in every local court district of the State, prescribe the jurisdiction and powers of the District Courts and Magistrates.

(5) *Waiver.* The General Assembly may by general law provide that the jurisdictional limits may be waived in civil cases.

(6) *Appeals.* The General Assembly shall by general law provide a proper system of appeals. Appeals from Magistrates shall be heard de novo, with the right of trial by jury as defined in this Constitution and the laws of this State.

Sec. 13. *Forms of action; rules of procedure.*

(1) *Forms of action.* There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall

be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) *Rules of procedure.* The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

Sec. 14. *Waiver of jury trial.*

In all issues of fact joined in any court, the parties in any civil case may waive the right to have the issues determined by a jury, in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

Sec. 15. *Administration.*

The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article.

Sec. 16. *Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.*

Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may prescribe.

Sec. 17. *Removal of Judges, Magistrates and Clerks.*

(1) *Removal of Judges by the General Assembly.* Any Justice or Judge of the General Court of Justice may be removed from office for mental or physical incapacity by joint resolution of two-thirds of all the members of each house of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least 20 days before the day on which either house of the General Assembly shall

act thereon. Removal from office by the General Assembly for any other cause shall be by impeachment.

(2) *Additional method of removal of Judges.* The General Assembly shall prescribe a procedure, in addition to impeachment and address set forth in this Section, for the removal of a Justice or Judge of the General Court of Justice for mental or physical incapacity interfering with the performance of his duties which is, or is likely to become, permanent, and for the censure and removal of a Justice or Judge of the General Court of Justice for wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(3) *Removal of Magistrates.* The General Assembly shall provide by general law for the removal of Magistrates for misconduct or mental or physical incapacity.

(4) *Removal of Clerks.* Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least 10 days before the hearing upon the charges. Any Clerk so removed from office shall be entitled to an appeal as provided by law.

Sec. 18. *District Attorney and Prosecutorial Districts.*

(1) *District Attorneys.* The General Assembly shall, from time to time, divide the State into a convenient number of prosecutorial districts, for each of which a District Attorney shall be chosen for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a District Attorney. The District Attorney shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

(2) *Prosecution in District Court Division.* Criminal actions in the District Court Division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

Sec. 19. *Vacancies.*

Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 60 days after

the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified.

Sec. 20. *Revenues and expenses of the judicial department.*

The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice. The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers, shall be paid from State funds.

Sec. 21. *Fees, salaries, and emoluments.*

The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article, but the salaries of Judges shall not be diminished during their continuance in office. In no case shall the compensation of any Judge or Magistrate be dependent upon his decision or upon the collection of costs.

Sec. 22. *Qualification of Justices and Judges.*

Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a Justice of the Supreme Court, Judge of the Court of Appeals, Judge of the Superior Court, or Judge of District Court. This section shall not apply to persons elected to or serving in such capacities on or before January 1, 1981.

ARTICLE V

FINANCE

Section 1. *No capitation tax to be levied.*

No poll or capitation tax shall be levied by the General Assembly or by any county, city or town, or other taxing unit.

Sec. 2. *State and local taxation.*

(1) *Power of taxation.* The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.

(2) *Classification.* Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.

(3) *Exemptions.* Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding $300, any personal property. The General Assembly may exempt from taxation not exceeding $1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

(4) *Special tax areas.* Subject to the limitations imposed by Section 4, the General Assembly may enact general laws authorizing the governing body of any county, city, or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, or maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.

(5) *Purposes of property tax.* The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is approved by a majority of the qualified voters of the unit who vote thereon.

(6) *Income tax.* The rate of tax on incomes shall not in any case exceed ten percent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed.

(7) *Contracts.* The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.

Sec. 3. *Limitations upon the increase of State debt.*

(1) *Authorized purposes; two-thirds limitation.* The General Assembly shall have no power to contract debts secured by a pledge of the faith and credit of the State, unless approved by a majority of the qualified voters of the State who vote thereon, except for the following purposes:

(a) to fund or refund a valid existing debt;

(b) to supply an unforeseen deficiency in the revenue;

than the retirement of the bonds for which the sinking fund has been created, except that these funds may be invested as authorized by law.

(2) *Retirement funds.* Neither the General Assembly nor any public officer, employee, or agency shall use or authorize to be used any part of the funds of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System for any purpose other than retirement system benefits and purposes, administrative expenses, and refunds; except that retirement system funds may be invested as authorized by law, subject to the investment limitation that the funds of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System shall not be applied, diverted, loaned to, or used by the State, any State agency, State officer, public officer, or public employee.

Sec. 7. *Drawing public money.*

(1) *State treasury.* No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.

(2) *Local treasury.* No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

Sec. 8. *Health care facilities.*

Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State, counties, cities or towns, and other State and local governmental entities to issue revenue bonds to finance or refinance for any such governmental entity or any nonprofit private corporation, regardless of any church or religious relationship, the cost of acquiring, constructing, and financing health care facility projects to be operated to serve and benefit the public; provided, no cost incurred earlier than two years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from the revenues, gross or net, of any such projects and any other health care facilities of any such governmental entity or nonprofit private corporation pledged therefor; shall not be secured by a pledge of the full faith and credit, or deemed to create an indebtedness requiring voter approval of any governmental entity; and may be secured by an agreement which may provide for the conveyance of title of, with or without consideration, any such project or facilities to the governmental entity or nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto for nonprofit private corporations.

Sec. 9. *Capital projects for industry.*

Nothwithstanding any other provision of this Constitution, the General Assembly may enact general laws to authorize counties to create authorities

to issue revenue bonds to finance, but not to refinance, the cost of capital projects consisting of industrial, manufacturing and pollution control facilities for industry and pollution control facilities for public utilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 10. *Joint ownership of generation and transmission facilities.*

In addition to other powers conferred upon them by law, municipalities owning or operating facilities for the generation, transmission or distribution of electric power and energy and joint agencies formed by such municipalities for the purpose of owning or operating facilities for the generation and transmission of electric power and energy (each, respectively, "a unit of municipal government") may jointly or severally own, operate and maintain works, plants and facilities, within or without the State, for the generation and transmission of electric power and energy, or both, with any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale (each, respectively, "a co-owner") within this State or any state contiguous to this State, and may enter into and carry out agreements with respect to such jointly owned facilities. For the purpose of financing its share of the cost of any such jointly owned electric generation or transmission facilities, a unit of municipal government may issue its revenue bonds in the manner prescribed by the General Assembly, payable as to both principal and interest solely from and secured by a lien and charge on all or any part of the revenue derived, or to be derived, by such unit of municipal government from the ownership and operation of its electric facilities; provided, however, that no unit of municipal government shall be liable, either jointly or severally, for any acts, omissions or obligations of any co-owner, nor shall any money or property of any unit of municipal government be credited or otherwise applied to the account of any co-owner or be charged with any debt, lien or mortgage as a result of any debt or obligation of any co-owner.

Sec. 11. *Capital projects for agriculture.*

Notwithstanding any other provision of the Constitution the General Assembly may enact general laws to authorize the creation of an agency to

issue revenue bonds to finance the cost of capital projects consisting of agricultural facilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 12. *Higher Education Facilities.*

Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State or any State entity to issue revenue bonds to finance and refinance the cost of acquiring, constructing, and financing higher education facilities to be operated to serve and benefit the public for any nonprofit private corporation, regardless of any church or religious relationship provided no cost incurred earlier than five years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from any revenues or assets of any such nonprofit private corporation pledged therefor, shall not be secured by a pledge of the full faith and credit of the State or such State entity or deemed to create an indebtedness requiring voter approval of the State or such entity, and, where the title to such facilities is vested in the State or any State entity, may be secured by an agreement which may provide for the conveyance of title to, with or without consideration, such facilities to the nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto.

Sec. 13. *Seaport and airport facilities.*

(1) Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to grant to the State, counties, municipalities, and other State and local governmental entities all powers useful in connection with the development of new and existing seaports and airports, and to authorize such public bodies:

(a) to acquire, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor, or otherwise dispose of lands and facilities and improvements, including undivided interest therein;

(b) to finance and refinance for public and private parties seaport and airport facilities and improvements which relate to, develop or further waterborne or airborne commerce and cargo and passenger traffic, including commercial, industrial,

manufacturing, processing, mining, transportation, distribution, storage, marine, aviation and environmental facilities and improvements; and

(c) to secure any such financing or refinancing by all or any portion of their revenues, income or assets or other available monies associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of their properties associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of the faith and credit of the State or any other public body in the State.

(d)

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. *Who may vote.*

Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

Sec. 2. *Qualifications of voter.*

(1) *Residence period for State elections.* Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) *Residence period for presidential elections.* The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) *Disqualification of felon.* No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

Sec. 3. *Registration.*

Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws governing the registration of voters.

Sec. 4. *Qualification for registration.*

Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

Sec. 5. *Elections by people and General Assembly.*

All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.

Sec. 6. *Eligibility to elective office.*

Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.

Sec. 7. *Oath.*

Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

"I, ..., do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as ....., so help me God."

Sec. 8. *Disqualifications for office.*

The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

Sec. 9. *Dual office holding.*

(1) *Prohibitions.* It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

(2) *Exceptions.* The provisions of this Section shall not prohibit any officer of the military forces of the State or of the United States not on active duty for an extensive period of time, any notary public, or any delegate to a Convention of the People from holding concurrently another office or place of trust or profit under this State or the United States or any department thereof.

Sec. 10. *Continuation in office.*

In the absence of any contrary provision, all officers in this State, whether appointed or elected, shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified.

ARTICLE VII

LOCAL GOVERNMENT

Section 1. *General Assembly to provide for local government.*

The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

The General Assembly shall not incorporate as a city or town, nor shall it authorize to be incorporated as a city or town, any territory lying within one mile of the corporate limits of any other city or town having a population of 5,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within three miles of the corporate limits of any other city or town having a population of 10,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within four miles of the corporate limits of any other city or town having a population of 25,000 or more according to the

most recent decennial census of population taken by order of Congress, or lying within five miles of the corporate limits of any other city or town having a population of 50,000 or more according to the most recent decennial census of population taken by order of Congress. Notwithstanding the foregoing limitations, the General Assembly may incorporate a city or town by an act adopted by vote of three-fifths of all the members of each house.

Sec. 2. *Sheriffs.*

In each county a Sheriff shall be elected by the qualified voters thereof at the same time and places as members of the General Assembly are elected and shall hold his office for a period of four years, subject to removal for cause as provided by law.

Sec. 3. *Merged or consolidated counties.*

Any unit of local government formed by the merger or consolidation of a county or counties and the cities and towns therein shall be deemed both a county and a city for the purposes of this Constitution, and may exercise any authority conferred by law on counties, or on cities and towns, or both, as the General Assembly may provide.

ARTICLE VIII
CORPORATIONS

Section 1. *Corporate charters.*

No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering, organization, and powers of all corporations, and for the amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general acts may be altered from time to time or repealed. The General Assembly may at any time by special act repeal the charter of any corporation.

Sec. 2. *Corporations defined.*

The term "corporation" as used in this Section shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and shall be subject to be sued in all courts, in like cases as natural persons.

ARTICLE IX
EDUCATION

Section 1. *Education encouraged.*

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

Sec. 2. *Uniform system of schools.*

(1) *General and uniform system: term.* The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

(2) *Local responsibility.* The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.

Sec. 3. *School attendance.*

The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means.

Sec. 4. *State Board of Education.*

(1) *Board.* The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of eight years. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

(2) *Superintendent of Public Instruction.* The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.

Sec. 5. *Powers and duties of Board.*

The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all

needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

Sec. 6. *State school fund.*

The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

Sec. 7. *County school fund.*

All moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

Sec. 8. *Higher education.*

The General Assembly shall maintain a public system of higher education, comprising The University of North Carolina and such other institutions of higher education as the General Assembly may deem wise. The General Assembly shall provide for the selection of trustees of The University of North Carolina and of the other institutions of higher education, in whom shall be vested all the privileges, rights, franchises, and endowments heretofore granted to or conferred upon the trustees of these institutions. The General Assembly may enact laws necessary and expedient for the maintenance and management of The University of North Carolina and the other public institutions of higher education.

Sec. 9. *Benefits of public institutions of higher education.*

The General Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.

Sec. 10. *Escheats.*

(1) *Escheats prior to July 1, 1971.* All property that prior to July 1, 1971, accrued to the State from escheats, unclaimed dividends, or

distributive shares of the estates of deceased persons shall be appropriated to the use of The University of North Carolina.

(2) *Escheats after June 30, 1971.* All property that, after June 30, 1971, shall accrue to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be used to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The method, amount, and type of distribution shall be prescribed by law.

ARTICLE X

HOMESTEADS AND EXEMPTIONS

Section 1. *Personal property exemptions.*

The personal property of any resident of this State, to a value fixed by the General Assembly but not less than $500, to be selected by the resident, is exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Sec. 2. *Homestead exemptions.*

(1) *Exemption from sale; exceptions.* Every homestead and the dwellings and buildings used therewith, to a value fixed by the General Assembly but not less than $1,000, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city or town with the dwellings and buildings used thereon, and to the same value, owned and occupied by a resident of the State, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for its purchase.

(2) *Exemption for benefit of children.* The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of the owner's children, or any of them.

(3) *Exemption for benefit of surviving spouse.* If the owner of a homestead dies, leaving a surviving spouse but no minor children, the homestead shall be exempt from the debts of the owner, and the rents and profits thereof shall inure to the benefit of the surviving spouse until he or she remarries, unless the surviving spouse is the owner of a separate homestead.

(4) Nothing contained in this Article shall operate to prevent the owner of a homestead from disposing of it by deed, but no deed made by a married owner of a homestead shall be valid without the signature and acknowledgement of his or her spouse.

Sec. 3. *Mechanics' and laborers' liens.*

The General Assembly shall provide by proper legislation for giving to mechanics and laborers an adequate lien on the subject-matter of their labor. The provisions of Sections 1 and 2 of this Article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming the exemption or a mechanic's lien for work done on the premises.

Sec. 4. *Property of married women secured to them.*

The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised and bequeathed and conveyed by her, subject to such regulations and limitations as the General Assembly may prescribe. Every married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by herself and her husband or by her husband.

Sec. 5. *Insurance.*

A person may insure his or her own life for the sole use and benefit of his or her spouse or children or both, and upon his or her death the proceeds from the insurance shall be paid to or for the benefit of the spouse or children or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his or her estate. Any insurance policy which insures the life of a person for the sole use and benefit of that person's spouse or children or both shall not be subject to the claims of creditors of the insured during his or her lifetime, whether or not the policy reserves to the insured during his or her lifetime any or all rights provided for by the policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured.

ARTICLE XI

PUNISHMENTS, CORRECTIONS, AND CHARITIES

Section 1. *Punishments.*

The following punishments only shall be known to the laws of this State: death, imprisonment, fines, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State.

Sec. 2. *Death punishment.*

The object of punishments being not only to satisfy justice, but also to reform the offender and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

Sec. 3. *Charitable and correctional institutions and agencies.*

Such charitable, benevolent, penal, and correctional institutions and agencies as the needs of humanity and the public good may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.

Sec. 4. *Welfare policy; board of public welfare.*

Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore the General Assembly shall provide for and define the duties of a board of public welfare.

ARTICLE XII

MILITARY FORCES

Section 1. *Governor is Commander in Chief.*

The Governor shall be Commander in Chief of the military forces of the State and may call out those forces to execute the law, suppress riots and insurrections, and repel invasion.

ARTICLE XIII

CONVENTIONS; CONSTITUTIONAL AMENDMENT AND REVISION

Section 1. *Convention of the People.*

No Convention of the People of this State shall ever be called unless by the concurrence of two-thirds of all the members of each house of the General Assembly, and unless the proposition "Convention or No Convention" is first submitted to the qualified voters of the State at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast upon the proposition are in favor of a Convention, it shall assemble on the day prescribed by the General Assembly. The General Assembly shall, in the act submitting the convention proposition, propose limitations upon the authority of the Convention; and if a majority of the votes cast upon the proposition are in favor of a Convention, those limitations shall become binding upon the Convention. Delegates to the Convention shall be elected by the qualified voters at the time and in the manner prescribed in the act of submission. The Convention shall consist of a number of delegates equal to the membership of the House of

Representatives of the General Assembly that submits the convention proposition and the delegates shall be apportioned as is the House of Representatives. A Convention shall adopt no ordinance not necessary to the purpose for which the Convention has been called.

Sec. 2. *Power to revise or amend Constitution reserved to people.*

The people of this State reserve the power to amend this Constitution and to adopt a new or revised Constitution. This power may be exercised by either of the methods set out hereinafter in this Article, but in no other way.

Sec. 3. *Revision or amendment by Convention of the People.*

A Convention of the People of this State may be called pursuant to Section 1 of this Article to propose a new or revised Constitution or to propose amendments to this Constitution. Every new or revised Constitution and every constitutional amendment adopted by a Convention shall be submitted to the qualified voters of the State at the time and in the manner prescribed by the Convention. If a majority of the votes cast thereon are in favor of ratification of the new or revised Constitution or the constitutional amendment or amendments, it or they shall become effective January first next after ratification by the qualified voters unless a different effective date is prescribed by the Convention.

Sec. 4. *Revision or amendment by legislative initiation.*

A proposal of a new or revised Constitution or an amendment or amendments to this Constitution may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast thereon are in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.

ARTICLE XIV

MISCELLANEOUS

Section 1. *Seat of government.*

The permanent seat of government of this State shall be at the City of Raleigh.

Sec. 2. *State boundaries.*

The limits and boundaries of the State shall be and remain as they now are.

Sec. 3. *General laws defined.*

Whenever the General Assembly is directed or authorized by this Constitution to enact general laws, or general laws uniformly applicable throughout the State, or general laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable throughout the State shall be made applicable without classification or exception in every unit of local government of like kind, such as every county, or every city and town, but need not be made applicable in every unit of local government in the State. General laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, shall be made applicable without classification or exception in every unit of local government, or in every local court district, as the case may be. The General Assembly may at any time repeal any special, local, or private act.

Sec. 4. *Continuity of laws; protection of office holders.*

The laws of North Carolina not in conflict with this Constitution shall continue in force until lawfully altered. Except as otherwise specifically provided, the adoption of this Constitution shall not have the effect of vacating any office or term of office now filled or held by virtue of any election or appointment made under the prior Constitution of North Carolina and the laws of the State enacted pursuant thereto.

Sec. 5. *Conservation of natural resources.*

It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

To accomplish the aforementioned public purposes, the State and its counties, cities and towns, and other units of local government may acquire by purchase or gift properties or interests in properties which shall, upon their special dedication to and acceptance by resolution adopted by a vote

of three-fifths of the members of each house of the General Assembly for those public purposes, constitute part of the "State Nature and Historic Preserve," and which shall not be used for other purposes except as authorized by law enacted by a vote of three-fifths of the members of each house of the General Assembly. The General Assembly shall prescribe by general law the conditions and procedures under which such properties or interests therein shall be dedicated for the aforementioned public purposes.

SESSION LAWS

OF THE

STATE OF NORTH CAROLINA

REGULAR SESSION 1995

H.B. 70 **CHAPTER 1**

AN ACT TO PROVIDE THAT THE GOVERNING BODY OF A TAXING UNIT MAY DELAY THE ACCRUAL OF INTEREST ON CERTAIN UNPAID PROPERTY TAXES.

The General Assembly of North Carolina enacts:

Section 1. A taxing unit's governing body may by resolution provide that, notwithstanding the provisions of G.S. 105-360 regarding the accrual of interest and G.S. 105-380 and G.S. 105-381 regarding the release, refund, or compromise of taxes, interest shall not accrue on unpaid taxes for fiscal year 1994-95 unless the taxes remain unpaid after February 15, 1995. Interest accruing on taxes that remain unpaid after February 15, 1995, shall be computed according to the schedule stated in G.S. 105-360 in the same manner as though the taxes were unpaid as of January 6, 1995. A resolution adopted pursuant to this act may apply only to fiscal year 1994-95 taxes, receipts of which were not delivered to the tax collector before December 1, 1994.

Sec. 2. A resolution adopted by a taxing unit's governing body pursuant to this act relieves the tax collector of that taxing unit of any obligation to collect interest on taxes to which the resolution applies that are paid on or before February 15, 1995. After adoption of the resolution, the governing body of the taxing unit or its delegate shall refund any interest subject to Section 1 of this act that was paid by a taxpayer for the period between January 6, 1995, and February 15, 1995.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of February, 1995.

H.B. 67 **CHAPTER 2**

AN ACT TO CREATE THE STATE-OWNED SUBMERGED LANDS ADVISORY COMMITTEE AND TO REQUIRE THAT THE ADVISORY COMMITTEE MAKE ITS FINAL REPORT TO THE GENERAL ASSEMBLY ON OR BEFORE MAY 1, 1995.

The General Assembly of North Carolina enacts:

Section 1. There is created the State-Owned Submerged Lands Advisory Committee.

(a) The Advisory Committee shall consist of 20 members, 10 appointed by the President Pro Tempore of the Senate and 10 appointed by the Speaker of the House of Representatives.

(b) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair from their respective appointees.

(c) The Advisory Committee shall study the issue of management of the private use of State-owned submerged lands, also known as public trust lands. The Advisory Committee shall review the history of the present use of these lands and shall consider current use of public trust lands and the appropriate fee structure, if any, for such use.

(d) The Advisory Committee shall meet upon the call of the cochairs. The first meeting shall be held within 10 days after the Advisory Committee has been appointed.

(e) Any person who is a member of the Advisory Committee may hold such membership concurrently with and in addition to any other elective or appointive office or offices such as a person is permitted to hold under G.S. 128-1.1.

(f) Members of the Advisory Committee who are not State employees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(g) All clerical services required by the Advisory Committee shall be supplied by the Department of Administration. The Attorney General shall provide legal services to the Advisory Committee.

(h) The Advisory Committee shall make its final written report to the General Assembly on or before May 1, 1995. Copies of the final report shall be provided to the Department of Administration, the Department of Environment, Health, and Natural Resources, and the Joint Legislative Commission on Seafood & Aquaculture. Upon making its final written report, the Advisory Committee shall terminate.

Sec. 2. Notwithstanding G.S. 146-11, G.S. 146-12, or any other provision of law, the Department of Administration shall not adopt a permanent schedule of terms and consideration for granting easements in lands covered by navigable waters owned by the State prior to December 1, 1995. The Department of Administration may, however, set such terms and consideration on a case-by-case basis.

Sec. 3. The Department of Administration shall pay expenses of the Advisory Committee from available funds.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of February, 1995.

H.B. 131 **CHAPTER 3**

AN ACT TO APPOINT MEMBERS OF THE WHITEVILLE CITY BOARD OF EDUCATION AND TO CHANGE THE TIME FOR THEIR APPOINTMENT.

The General Assembly of North Carolina enacts:

Section 1. Section 9 of Chapter 172 of the 1977 Session Laws reads as rewritten:

"Sec. 9. After the election for elected members in 1978, and at least 10 days before the members are to take office, the General Assembly shall appoint four members for terms of two years. ~~Thereafter, all~~ After the initial appointments are made, and until 1995, all appointed members shall be appointed for terms of two years, and their appointment shall be made by the General Assembly at least 10 days prior to the time for taking office and after the election for elected members. Beginning in 1995, and thereafter, all appointed members shall be appointed for terms of two years, and their appointment shall be made by the General Assembly for terms to begin on the fourth Tuesday in February."

Sec. 2. Pursuant to Chapter 172 of the Session Laws of 1977, as amended by Section 1 of this act, the following persons are appointed to the Board of Education for the Whiteville City School Administrative Unit, and they shall serve for a term of two years beginning on the fourth Tuesday in February of 1995: David Flowers, L. Calvin Duncan, LaDeen Powell, and Flossie N. Inman.

Sec. 3. Section 6 of Chapter 172 of the 1977 Session Laws, as amended by Section 1 of Chapter 4 of the 1983 Session Laws, reads as rewritten:

"Sec. 6. The election for five members of the board shall be held in 1978 and biennially thereafter, at the time of the general elections in North Carolina, and shall be conducted according to the provisions of the General Statutes then governing elections. Members of the board elected in 1982 ~~and thereafter~~ through 1994 shall take office on the first Tuesday in February next after the election, and the terms of office of their immediate predecessors shall end on that date. Members of the Board elected in 1996 and thereafter shall take office on the fourth Tuesday in February next after the election, and the terms of office of their immediate predecessors shall end on that date."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of February, 1995.

S.B. 13 **CHAPTER 4**

AN ACT TO FURTHER REDUCE EMPLOYERS' UNEMPLOYMENT INSURANCE TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-9(a)(5) reads as rewritten:

"(5) An employer is not required to pay contributions on wages the employer pays to an individual in a calendar year in excess of the taxable wage base for that calendar year. The taxable wage base is the greater of (i) the federally required taxable wage base or (ii) the product resulting from multiplying the average yearly insured wage by fifty percent (50%), rounded to the nearest multiple of one hundred dollars ($100.00). The average yearly insured wage is the average weekly insured wage on the applicable computation date multiplied by 52. ~~Prior to January 1, 1978, the term 'wages' shall not include for the purposes of this section any remuneration in excess of four thousand two hundred dollars ($4,200) paid to any individual in a single calendar year by an employer with respect to employment.~~ The following wages are included in determining whether the amount of wages paid to an individual in a single calendar year exceeds the taxable wage base:

a. ~~For purposes of this section, the term 'wages' shall not include any remuneration paid to any employee in this State in excess of this State's tax base~~ Wages paid to an individual in this State by ~~a single~~ an employer ~~if the employer of that individual~~ that made contributions in another state ~~or states~~ upon the wages paid to ~~such~~ the individual ~~during the applicable calendar year,~~ because ~~of~~ the work was performed in ~~another state or states.~~ the other state.

b. Wages paid by a ~~Any~~ successor employer ~~as defined in G.S. 96-8(5)b for the purposes of this section shall pay no contributions on that part of remuneration earned by any~~ to an individual ~~in the employ of the successor employer which, when added to the remuneration previously paid by the predecessor employer exceeded this State's tax base in a single calendar year, provided~~ that meets both of the following conditions: (i) the individual was an employee of the predecessor and was taken over as an employee by the successor as a part of the organization acquired ~~and, provided further, that~~ and (ii) the predecessor employer has paid contributions on the wages paid to ~~such~~ the individual while in ~~his~~ the predecessor's employ during the year of acquisition and the account of the predecessor is transferred to the successor in accordance with G.S. 96-9(c)(4)a.

~~Beginning January 1, 1978, and thereafter, the taxable wage base of any employee whose wages are subject to taxation, whether totally or partially, by the State of North Carolina under any provision of this Chapter shall be the federally required tax base.~~

~~On the computation date (August 1) in 1983 and each computation date thereafter, the Commission shall compute the average yearly insured wage by multiplying the average weekly~~

~~insured wage (obtained in accordance with G.S. 96-8(22)) by 52. During the calendar year following the computation date, the taxable wage base shall be the greater of the federally required tax base or the product resulting from multiplying the average yearly insured wage by sixty percent (60%), rounded to the nearest multiple of one hundred dollars ($100.00).~~"

Sec. 2. G.S. 96-9(b)(3) is amended by adding a new subdivision d3. to read:

"d3. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1995, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars ($800,000,000) on the computation date.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:										
As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
4.0%	4.2%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%
4.2%	4.4%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%
4.4%	4.6%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%	0.01%
4.6%	4.8%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%	0.01%	0.01%
4.8%	5.0%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%	0.01%	0.01%	0.01%
5.0%	&OVER	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%"

Sec. 3. Effective January 1, 1998, G.S. 96-9(b)(3)d2. is repealed.

Sec. 4. Section 3 of this act becomes effective January 1, 1998. The remainder of this act is effective upon ratification and applies to quarters beginning on or after January 1, 1995.

In the General Assembly read three times and ratified this the 27th day of February, 1995.

S.B. 3 **CHAPTER 5**

AN ACT TO PROVIDE FOR A REFERENDUM TO AMEND THE CONSTITUTION TO PROVIDE FOR A GUBERNATORIAL VETO.

The General Assembly of North Carolina enacts:

Section 1. Section 22 of Article II of the Constitution of North Carolina reads as rewritten:

"Sec. 22. *Action on bills.*

~~All bills and resolutions of a legislative nature shall be read three times in each house before they become laws, and shall be signed by the presiding officers of both houses.~~

(1) *Bills subject to veto by Governor; override of veto.* Except as provided by subsections (2) through (6) of this section, all bills shall be read three times in each house and shall be signed by the presiding officer of each house before being presented to the Governor. If the Governor approves, the Governor shall sign it and it shall become a law; but if not, the Governor shall return it with objections, together with a veto message stating the reasons for such objections, to that house in which it shall have originated, which shall enter the objections and veto message at large on its journal, and proceed to reconsider it. If after such reconsideration three-fifths of the members of that house present and voting shall agree to pass the bill, it shall be sent, together with the objections and veto message, to the other house, by which it shall likewise be reconsidered; and if approved by three-fifths of the members of that house present and voting, it shall become a law notwithstanding the objections of the Governor. In all such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively.

(2) *Amendments to Constitution of North Carolina.* Every bill proposing a new or revised Constitution or an amendment or amendments to this Constitution or calling a convention of the people of this State, and containing no other matter, shall be submitted to the qualified voters of this State after it shall have been read three times in each house and signed by the presiding officers of both houses.

(3) *Amendments to Constitution of the United States.* Every bill approving an amendment to the Constitution of the United States, or applying for a convention to propose amendments to the Constitution of the United States, and containing no other matter, shall be read three times in each house before it becomes law, and shall be signed by the presiding officers of both houses.

(4) *Joint resolutions.* Every joint resolution shall be read three times in each house before it becomes effective and shall be signed by the presiding officers of both houses.

(5) *Other exceptions.* Every bill:

(a) In which the General Assembly makes an appointment or appointments to public office and which contains no other matter;

(b) Revising the senate districts and the apportionment of Senators among those districts and containing no other matter;

(c) Revising the representative districts and the apportionment of Representatives among those districts and containing no other matter; or

(d) Revising the districts for the election of members of the House of Representatives of the Congress of the United States and the apportionment of Representatives among those districts and containing no other matter,

shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses.

(6) *Local bills.* Every bill that applies in fewer than 15 counties shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses. The exemption from veto by the Governor provided in this subsection does not apply if the bill, at the time it is signed by the presiding officers:

(a) Would extend the application of a law signed by the presiding officers during that two year term of the General Assembly so that the law would apply in more than half the counties in the State, or

(b) Would enact a law identical in effect to another law or laws signed by the presiding officers during that two year term of the General Assembly that the result of those laws taken together would be a law applying in more than half the counties in the State.

Notwithstanding any other language in this subsection, the exemption from veto provided by this subsection does not apply to any bill to enact a general law classified by population or other criteria, or to any bill that contains an appropriation from the State treasury.

(7) *Time for action by Governor; reconvening of session.* If any bill shall not be returned by the Governor within 10 days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly shall have adjourned:

(a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or

(b) Sine die

in which case it shall become a law unless, within 30 days after such adjournment, it is returned by the Governor with objections and veto message to that house in which it shall have originated. When the General Assembly has adjourned sine die or for more than 30 days jointly as provided under Section 20 of Article II of this Constitution, the Governor shall reconvene that session as provided by Section 5(11) of Article III of this Constitution for reconsideration of the bill, and if the Governor does not reconvene the session, the bill shall become law on the fortieth day after such adjournment. Notwithstanding the previous sentence, if the Governor

prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider vetoed legislation is unnecessary, the Governor shall not reconvene the session for that purpose and any legislation vetoed in accordance with this section after adjournment shall not become law.

(8) *Return of bills after adjournment.* For purposes of return of bills not approved by the Governor, each house shall designate an officer to receive returned bills during its adjournment."

Sec. 2. Section 5 of Article III of the Constitution of North Carolina is amended by adding a new subsection to read:

"(11) *Reconvened sessions.* The Governor shall, when required by Section 22 of Article II of this Constitution, reconvene a session of the General Assembly. At such reconvened session, the General Assembly may only consider such bills as were returned by the Governor to that reconvened session for reconsideration. Such reconvened session shall begin on a date set by the Governor, but no later than 40 days after the General Assembly adjourned:

(a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or

(b) Sine die.

If the date of reconvening the session occurs after the expiration of the terms of office of the members of the General Assembly, then the members serving for the reconvened session shall be the members for the succeeding term."

Sec. 3. The amendments set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at the general election in November of 1996, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendments granting veto power to the Governor".

Sec. 4. If a majority of votes cast on the question are in favor of the amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The amendments become effective January 1, 1997. The Secretary of State shall enroll the amendments so certified among the permanent records of that office.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of March, 1995.

S.B. 16 **CHAPTER 6**

AN ACT DIRECTING THE STATE BOARD OF EDUCATION TO RECOMMEND CHANGES IN THE PUBLIC SCHOOL SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. The State Board of Education shall examine the structure and functions of the State public school system with a view to improving student performance, increasing local flexibility and control, and promoting economy and efficiency, and shall recommend changes in the public school system to the General Assembly. In carrying out this examination, the State Board of Education shall consider ways to reorder priorities and place greater emphasis on the basics - reading, communication skills, and mathematics - in the areas of staff development, the State testing program, the State accreditation program, the use of remediation funds, the instructional program, and other components of the State public school system. The State Board of Education shall also consider the impact the changes it is considering will have on the mission of the Department of Public Instruction.

The State Board shall make a preliminary report to the General Assembly prior to May 1, 1995, and a final report prior to March 1, 1996, on the results of its examination of the State public school system. The report shall include any proposed legislation necessary to implement the State Board's recommendations.

Sec. 2. The State Board of Education shall also examine the administrative organization of the Department of Public Instruction with a view to (i) increasing local flexibility and local control of education, (ii) promoting economy and efficiency in government in the interest of producing cost savings that can be used to provide funds for textbooks, school supplies, and equipment, and for reducing class size, and (iii) improving student performance. The State Board of Education, as a result of these examinations, shall propose necessary changes in the mission of the Department of Public Instruction and methods of implementing those changes. The State Board of Education shall develop a plan for reducing, eliminating, and/or reorganizing the Department of Public Instruction. A reorganization may include the assignment or reassignment of the Department's duties and functions among divisions and other units, division heads, officers, and employees.

The proposed reduction, elimination, and/or reorganization of the Department shall have a goal of resulting in a decrease of at least fifty percent (50%) in the number of employee positions assigned to the Department and a decrease of at least fifty percent (50%) in the Department's budget by January 1, 1996.

The State Board of Education shall make a preliminary report to the General Assembly prior to March 31, 1995, and a final report prior to May 1, 1995, on the reduction, elimination, and/or reorganization plan it develops.

Sec. 3. The State Board of Education shall fully inform and consult with the Superintendent of Public Instruction and the chairs of the Education Committees and the Education Appropriation Subcommittees of the Senate and the House of Representatives on a regular basis as the Board carries out its duties under this act.

Sec. 4. The Director of the Budget shall authorize the expenditure of up to one hundred thousand dollars ($100,000) from existing funds by the State Board of Education to contract for outside consultants and assistance to

assist the State Board in carrying out its duties under this act. The Office of State Budget and Management, the State Auditor, and other appropriate State agencies shall also provide consultation as requested by the chairman of the State Board of Education as needed to develop the plans set out in this act.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of March, 1995.

H.B. 80 **CHAPTER 7**

AN ACT TO REPEAL THE SPECIAL USE TAX ON CONSTRUCTION EQUIPMENT BROUGHT INTO THE STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.6(g) is repealed.

Sec. 2. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute repealed by this act before its repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the repealed statute before its repeal.

Sec. 3. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 9th day of March, 1995.

S.B. 63 **CHAPTER 8**

AN ACT TO REQUIRE LOCAL SCHOOL BOARDS TO PROVIDE THE NORTH CAROLINA HISTORICAL COMMISSION WITH NOTICE OF PLANS TO REPLACE OLD SCHOOL BUILDINGS BY SUBMITTING THE FEASIBILITY AND COST ANALYSES FOR REVIEW BY THE COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-521(c) reads as rewritten:

"(c) The building of all new school buildings and the repairing of all old school buildings shall be under the control and direction of, and by contract with, the board of education for which the building and repairing is done. If a board of education is considering building a new school building to replace an existing school building, the board shall not invest any construction money in the new building unless it submits to the State Superintendent and the State Superintendent submits to the North Carolina Historical Commission an analysis that compares the costs and feasibility of building the new building and of renovating the existing building and that clearly indicates the desirability of building the new building. Boards of education shall also not invest any money in any new building that is not built in accordance with plans approved by the State Superintendent to structural and functional soundness, safety and sanitation, nor contract for more money than is made available for its erection. However, this subsection shall not be construed so as to prevent boards of education from

investing any money in buildings that are being constructed pursuant to a continuing contract of construction as provided for in G.S. 115C-441(c1). All contracts for buildings shall be in writing and all buildings shall be inspected, received, and approved by the local superintendent and the architect before full payment is made therefor: Provided, that this subsection shall not prohibit boards of education from repairing and altering buildings with the help of janitors and other regular employees of the board.

In the design and construction of new school buildings and in the renovation of existing school buildings that are required to be designed by an architect or engineer under G.S. 133-1.1, the local board of education shall participate in the planning and review process of the Energy Guidelines for School Design and Construction that are developed and maintained by the Department of Public Instruction and shall adopt local energy-use goals for building design and operation that take into account local conditions in an effort to reduce the impact of operation costs on local and State budgets. In the design and construction of new school facilities and in the repair and renovation of existing school facilities, the local board of education shall consider the placement and design of windows to use the climate of North Carolina for both light and ventilation in case of power shortages. A local board shall also consider the installation of solar energy systems in the school facilities whenever practicable.

In the case of any school buildings erected, repaired, or equipped with any money loaned or granted by the State to any local school administrative unit, the State Board of Education, under any rules as it may deem advisable, may retain any amount not to exceed fifteen percent (15%) of the loan or grant, until the completed buildings, erected or repaired, in whole or in part, from the loan or grant funds, shall have been approved by a designated agent of the State Board of Education. Upon approval by the State Board of Education, the State Treasurer may pay the balance of the loan or grant to the treasurer of the local school administrative unit for which the loan or grant was made."

Sec. 2. This act is effective upon ratification and applies to cost and feasibility analyses submitted to the State Superintendent on or after that date.

In the General Assembly read three times and ratified this the 13th day of March, 1995.

S.B. 133 **CHAPTER 9**

AN ACT TO ALLOW GRAHAM COUNTY AND MACON COUNTY TO EMPLOY ATTACHMENT OR GARNISHMENT AND TO OBTAIN A LIEN FOR AMBULANCE SERVICES AND TO MAKE IT A MISDEMEANOR TO OBTAIN AMBULANCE SERVICES WITHOUT INTENT TO PAY OR TO MAKE AN UNNEEDED AMBULANCE REQUEST IN GRAHAM COUNTY AND POLK COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 44-51.8 reads as rewritten:

"*§ 44-51.8. Counties to which Article applies.*

The provisions of this Article shall apply only to Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Caswell, Catawba, Chatham, Cherokee, Chowan, Cleveland, Columbus, Craven, Cumberland, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Mecklenburg, Mitchell, Montgomery, Moore, Nash, New Hanover, Onslow, Pasquotank, Person, Pitt, Polk, Randolph, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Transylvania, Tyrrell, Union, Vance, Wake, Warren, Washington, Watauga, Wilkes, Wilson, Yadkin and Yancey Counties."

Sec. 2. G.S. 14-111.2 reads as rewritten:

"*§ 14-111.2. Obtaining ambulance services without intending to pay therefor -- certain named counties.*

Any person who with intent to defraud shall obtain ambulance services without intending at the time of obtaining such services to pay, if financially able, any reasonable charges therefor shall be guilty of a Class 2 misdemeanor. A determination by the court that the recipient of such services has willfully failed to pay for the services rendered for a period of 90 days after request for payment, and that the recipient is financially able to do so, shall raise a presumption that the recipient at the time of obtaining the services intended to defraud the provider of the services and did not intend to pay for the services.

The section shall apply to Anson, Ashe, Beaufort, Caldwell, Caswell, Catawba, Chatham, Cherokee, Clay, Cleveland, Cumberland, Davie, Duplin, Forsyth, Gaston, Graham, Guilford, Haywood, Henderson, Hoke, Hyde, Iredell, Macon, Mecklenburg, Montgomery, Orange, Pasquotank, Person, Polk, Randolph, Robeson, Rockingham, Scotland, Stanly, Surry, Transylvania, Union, Vance, Washington, Wilkes and Yadkin Counties only."

Sec. 3. G.S. 14-111.3 reads as rewritten:

"*§ 14-111.3. Making unneeded ambulance request in certain counties.*

It shall be unlawful for any person or persons to willfully obtain or attempt to obtain ambulance service that is not needed, or to make a false request or report that an ambulance is needed. Every person convicted of violating this section shall be guilty of a Class 3 misdemeanor.

This section shall apply only to the Counties of Ashe, Buncombe, Cherokee, Clay, Cleveland, Davie, Duplin, Graham, Greene, Haywood, Hoke, Macon, Madison, Polk, Robeson, Washington, Wilkes and Yadkin."

Sec. 4. Sections 2 and 3 of this act become effective December 1, 1995, and the remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of March, 1995.

S.B. 153 **CHAPTER 10**

AN ACT TO REMOVE THE REQUIREMENTS THAT GRANITE FALLS ABC STORES BE AUDITED QUARTERLY.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 546 of the 1963 Session Laws, as amended by Chapter 1054 of the 1973 Session Laws, Chapter 32 of the 1977 Session Laws, Chapter 32 of the 1979 Session Laws, and Chapter 728 of the 1993 Session Laws, is further amended by deleting "to be determined by quarterly audits,".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of March, 1995.

H.B. 121 **CHAPTER 11**

AN ACT TO ALLOW THE HUNTING OF DEER WITH MUZZLE-LOADING RIFLES OF ANY CALIBER DURING MUZZLE-LOADING DEER SEASON IN SCOTLAND COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 1143 of the 1959 Session Laws reads as rewritten:

"Section 1. It shall be unlawful for any person to hunt deer with a rifle of larger bore than twenty-two (.22) ~~caliber.~~ caliber, except in Scotland County during the muzzle-loading firearm deer season as established by the Wildlife Resources Commission."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of March, 1995.

H.B. 181 **CHAPTER 12**

AN ACT TO CHANGE THE PAY DATE FOR THE CALDWELL COUNTY SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. Section 19.22 of Chapter 769 of the 1993 Session Laws reads as rewritten:

"Sec. 19.22. Notwithstanding the provisions of G.S. 115C-302(a), G.S. 115C-316(a), or any other provision of law, all 10-month employees of the Caldwell County Board of Education who are paid on a monthly basis shall be paid on the ~~fifteenth~~ twelfth day of each month. Nothing in this section shall have the effect of changing the rate of pay for any employee of the Caldwell County Board of Education.

This section shall not be construed to authorize prepayment of any employees by the Caldwell County Board of Education."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of March, 1995.

H.B. 339 **CHAPTER 13**

AN ACT TO PROVIDE THAT THE LAWS RELATING TO MOTOR VEHICLES APPLY WITHIN THE SEVEN LAKES COMMUNITY IN MOORE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles are applicable to the streets, roadways, and alleys on the properties owned by or under the control of the Seven Lakes Landowners Association, Inc., or the members of the Seven Lakes Landowners Association, Inc. For purposes of this act, streets, roadways, and alleys in the Seven Lakes Community shall have the same meanings as highways and public vehicular areas pursuant to G.S. 20-4.01. A violation of any of those laws is punishable as prescribed by those laws.

Sec. 2. This act is enforceable by any company policeman appointed under Chapter 74E of the General Statutes, certified by the North Carolina Criminal Justice Education and Training Standards Commission, and employed by the Seven Lakes Landowners Association, Inc.

Sec. 3. This act shall not be construed as in any way interfering with the ownership and control of the streets, roadways, and alleys of the Seven Lakes Landowners Association, Inc., or its members as is now vested by law in that association or its members. The speed limits within the Seven Lakes Community shall be the same as those in effect at the time of ratification of this act. Any proposed change in the speed limit shall be submitted to and approved by the Moore County Board of Commissioners. Pursuant to G.S. 20-141, the Moore County Board of Commissioners may authorize by ordinance higher or lower speeds.

Sec. 4. This act applies only to Moore County.

Sec. 5. This act is effective upon ratification.

S.B. 162 **CHAPTER 14**

AN ACT TO DELAY THE EFFECTIVE DATE OF THE CHANGES MADE IN 1994 TO THE LAWS CONCERNING THE TINTING OF WINDOWS ON MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 683 of the 1993 Session Laws (Reg. Sess., 1994) reads as rewritten:

"Sec. 2. This act becomes effective ~~March~~ November 1, 1995."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of March, 1995.

S.B. 271 **CHAPTER 15**

AN ACT TO REMOVE THE SUNSET ON FUEL COST ADJUSTMENT FOR ELECTRIC UTILITIES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 129 of the 1991 Session Laws is repealed.

Sec. 2. Section 3 of Chapter 129 of the 1991 Session Laws reads as rewritten:

"Sec. 3. On July 1, 1993 and every two years thereafter, the Utilities Commission shall provide a report to the Joint Legislative Utility Review Committee summarizing the procedures conducted pursuant to G.S. 62-133.2 during the preceding two ~~years~~ years. ~~and recommending whether this section should be continued, repealed, or amended. The Joint Legislative Utility Review Committee shall report to the General Assembly beginning with the 1994 Regular Session and every two years thereafter which report shall contain the information provided by the Utilities Commission and the Committee's recommendation whether G.S. 62-133.2 should be continued, repealed, or amended.~~"

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of March, 1995.

S.B. 75 **CHAPTER 16**

AN ACT TO ALLOW AN EXTENSION OF TIME FOR THE CITY OF RAEFORD TO FILE AN APPLICATION FOR A SALES TAX REFUND.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 105-164.14(c) and (d), an application for a sales tax refund filed by the City of Raeford for taxes paid during the fiscal year ending June 30, 1993, that otherwise complies with the requirements of G.S. 105-164.14(c) shall be considered timely if it is filed on or before December 31, 1994.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of March, 1995.

S.B. 104 **CHAPTER 17**

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Effective July 1, 1995, G.S. 105-113.82(a) reads as rewritten:

"(a) Amount, Method. -- The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, less the amount of the net proceeds credited to the Department of Agriculture under ~~G.S. 105-113.81A,~~ G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is authorized:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23 3/4%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately."

Sec. 2. G.S. 105-130.25(b) reads as rewritten:

"(b) Cogenerating Power Plant Defined. -- For purposes of this section, a cogenerating power plant is a power plant that ~~that~~ sequentially produces electrical or mechanical power and useful thermal energy from the same primary energy source. The credit allowed by this section does not apply to construction of a cogenerating power plant whose combustion equipment uses residual oil, middle distillate oil, gasoline, or liquid propane gas (LPG) as a primary fuel."

Sec. 3. G.S. 105-130.2(5c) reads as rewritten:

"(5c) State net income. -- ~~Federal~~ The taxpayer's federal taxable income as determined under the Code, adjusted as provided in G.S. 105-130.5 and, in the case of a corporation that has income from business activity that is taxable both within and without this State, allocated and apportioned to this State as provided in G.S. 105-130.4."

Sec. 4. G.S. 105-134.5 reads as rewritten:

"§ *105-134.5. North Carolina taxable income defined.*

(a) Residents. -- For residents of this State, the term 'North Carolina taxable income' means the taxpayer's taxable income as ~~calculated~~ determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7.

(b) Nonresidents. -- For nonresident individuals, the term 'North Carolina taxable income' means the taxpayer's taxable income as ~~calculated~~ determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, multiplied by a fraction the denominator of which is the taxpayer's gross income as ~~calculated~~ determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, and the numerator of which is the amount of that gross income, as adjusted, that is derived from

North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or is derived from a business, trade, profession, or occupation carried on in this State.

(c) Part-year Residents. -- If an individual was a resident of this State for only part of the taxable year, having moved into or removed from the State during the year, the term 'North Carolina taxable income' has the same meaning as in subsection (b) except that the numerator shall include gross income, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, derived from all sources during the period the individual was a resident.

(d) S Corporations and Partnerships. -- In order to calculate the numerator of the fraction provided in subsection (b), the amount of a shareholder's pro rata share of S Corporation income that is includable in the numerator shall be the shareholder's pro rata share of the S Corporation's income attributable to the State, as defined in G.S. 105-131(b)(4). In order to calculate the numerator of the fraction provided in subsection (b) for a member of a partnership or other unincorporated business with one or more nonresident members that operates in one or more other states, the amount of the member's distributive share of income of the business that is includable in the numerator shall be determined by multiplying the total net income of the business by the ratio ascertained under the provisions of G.S. 105-130.4. As used in this subsection, total net income means the entire gross income of the business less all expenses, taxes, interest, and other deductions allowable under the Code which were incurred in the operation of the business."

Sec. 5. Effective for taxable years beginning on or after January 1, 1995, G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(7) The amount of federal estate tax that is attributable to an item of income in respect of a decedent and is deducted from gross income under section 691(c) of the Code."

Sec. 6. G.S. 105-164.4(c) reads as rewritten:

"(c) Any person who engages in any business for which a privilege tax is imposed by this Article shall apply for and obtain from the Secretary upon payment of fifteen dollars ($15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business.

A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this ~~section~~ subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of eighteen months, the license holder files no return or files returns showing no sales.

A retailer who sells tangible personal property at a flea market shall conspicuously display the retailer's sales tax license when making sales at the flea market."

Sec. 7. G.S. 105-164.6(f) reads as rewritten:

"(f) Every retailer engaged in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State shall apply for and obtain from the Secretary upon payment of fifteen dollars

($15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business. ~~Except as hereinafter provided, a~~ A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of 18 months, the license holder files no return or files returns showing no sales.

~~A license issued under this section becomes void if the license holder ceases to be engaged in a business for which a tax is imposed by this Article and remains continuously out of business for a period of five years. The burden of proving that a license is still valid is on the license holder.~~"

Sec. 8. G.S. 105-164.14 reads as rewritten:

"*§ 105-164.14. Certain refunds authorized.*

(a) Interstate Carriers. -- An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on lubricants, repair parts, and accessories purchased in this State for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. ~~Any person~~ An 'interstate carrier' is a person who is engaged in transporting persons or property in interstate commerce for ~~compensation who~~ compensation, is subject to regulation by, and to the jurisdiction of, the Interstate Commerce Commission or the United States Department of ~~Transportation and who~~ Transportation, and is required by either ~~such~~ federal agency to keep records according to ~~its standard classification of accounting~~ generally accepted accounting principles (GAAP) or, in the case of a small certificated air carrier, ~~is required by the U.S. Department of Transportation~~ to make reports of financial and operating ~~statistics, may secure a refund from the Secretary of Revenue with respect to sales or use tax paid by such person on purchases or acquisitions of lubricants, repair parts and accessories in this State for motor vehicles, railroad cars, locomotives, and airplanes operated by such person, upon the conditions described below,~~ statistics. The Secretary ~~of Revenue~~ shall prescribe the periods of time, whether monthly, quarterly, ~~semiannually~~ semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following ~~such~~ these periods, an application for refund may be made.

An applicant for refund shall furnish ~~such~~ the following information ~~as the Secretary may require,~~ and any proof of the information required by the Secretary:

(1) A list identifying the lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.

(5) Any other information required by the Secretary.

~~including detailed information as to lubricants, repair parts and accessories wherever purchased, whether within or without the State, acquired during the period with respect to which a refund is sought, and the purchase price thereof, detailed information as to sales and use tax paid in this State thereon, and detailed information as to the number of miles such motor vehicles, railroad cars, locomotives, and airplanes were operated both within this State, and without this State, during such period, together with satisfactory proof thereof. The~~

For each applicant, the Secretary shall ~~thereupon~~ compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period. ~~tax which would be due with respect to all lubricants, repair parts and accessories acquired during the refund period as though all such purchases were made in this State, but only on such proportion of the total purchase prices thereof as the total number of miles of operation of such applicants' motor vehicles, railroad cars, locomotives, and airplanes within this State bears to the total number of miles of operation of such applicants' motor vehicles, railroad cars, locomotives and airplanes within and without this State, and such amount of sales and use tax as the applicant has paid in this State during said refund period in excess of the amounts so computed shall be refunded to the applicant.~~

(b) Nonprofit Corporations. -- The Secretary ~~of Revenue~~ shall make refunds semiannually to hospitals not operated for profit (including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 2 of Chapter 131E of the General Statutes), educational institutions not operated for profit, ~~churches, orphanages~~ and churches, orphanages, and other charitable or religious institutions and organizations not operated for profit of sales and use taxes paid under this Article, except under G.S. ~~105-164.4(4a) and G.S. 105-164.4(4c),~~ 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), by ~~such~~ these institutions and organizations on direct purchases of tangible personal property for use in carrying on the work of ~~such~~ the institutions or organizations. Sales and use tax liability indirectly incurred by ~~such~~ one of these institutions ~~and~~ or organizations on building materials, supplies, ~~fixtures~~ fixtures, and equipment ~~which shall~~ that become a part of or annexed to any building or structure that is owned or leased by the institution or organization and is being erected, ~~altered~~ altered, or repaired for ~~such~~ use by the institution or organization ~~institutions and organizations~~

for carrying on ~~their~~ its nonprofit activities ~~shall be construed as~~ is considered a sales or use tax liability incurred on direct purchases by ~~such institutions and organizations, and such the institutions and organizations may obtain refunds of such these taxes indirectly paid.~~ the institution or organization. The Secretary ~~of Revenue~~ shall also make refunds semiannually to all other hospitals not excluded by this subsection ~~(not specifically excluded herein)~~ of sales and use tax paid by them on medicines and drugs purchased for use in carrying out ~~the work of such hospitals.~~ their work. This subsection does not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under Article 2 of Chapter 131E of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c). ~~In order to receive the refunds herein provided for, such institutions and organizations shall file a written request for refund covering the first six months of the calendar year on or before the fifteenth day of October next following the close of said period, and shall file a written request for refund covering the second six months of the calendar year on or before the fifteenth day of April next following the close of that period. Such requests for refund shall be substantiated by such proof as the Secretary of Revenue may require, and no refund shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may require.~~ A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15.

(c) Certain Governmental Entities. -- A governmental entity listed in this subsection is allowed an annual refund ~~Upon receipt of timely applications for refund, the Secretary of Revenue shall make refunds annually to all governmental entities, as hereinafter defined,~~ of sales and use tax paid by it under this Article, except under G.S. ~~105-164.4(4a) and G.S. 105-164.4(4c), by said governmental entities~~ 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by ~~such governmental entities~~ a governmental entity on building materials, supplies, ~~fixtures~~ fixtures, and equipment ~~which shall~~ that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, ~~altered~~ altered, or repaired ~~which is owned or leased by such governmental entities shall be construed as~~ for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. ~~such governmental entities, and such entities may obtain refunds of such taxes indirectly paid. The refund provisions contained in this subsection shall not apply to any governmental entities not specifically named herein. In order to receive the refund~~ A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the

governmental entity's fiscal year. ~~herein provided for, governmental entities shall file a written request for said refund within six months of the close of the fiscal year of the governmental entities seeking said refund, and such request for refund shall be substantiated by such records, receipts and information as the Secretary may require. No refunds shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may otherwise require. The term "governmental entities," for the purposes of this subsection, shall mean~~

This subsection applies only to the following governmental entities:

(1) A county.
(2) A city as defined in G.S. 160A-1.
(3) A metropolitan sewerage district or a metropolitan water district in this State.
(4) A water and sewer authority created under Chapter 162A of the General Statutes.
(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.
(6) A sanitary district.
(7) A regional solid waste management authority created pursuant to G.S. 153A-421.
(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.
(9) A district health department.
(10) A regional council of governments created pursuant to G.S. 160A-470.
(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.
(12) A regional planning commission created pursuant to G.S. 153A-391.
(13) A regional sports authority created pursuant to G.S. 160A-479.
(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.
(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes.
(16) A local airport authority that was created pursuant to a local act of the General Assembly and has at least one of the following characteristics:
    a. It has all of the rights of a municipality.
    b. A local act of the General Assembly declares it to be a municipality.
    c. A local act of the General Assembly specifically authorizes it to receive a refund under this section.
(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.

(18) The North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes.

(19) The North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes.

(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property acquired by it through the expenditure of contract and grant funds.

~~all counties, incorporated cities and towns, water and sewer authorities created and existing under the provisions of Chapter 162A of the General Statutes, lake authorities created by a board of county commissioners pursuant to an act of the General Assembly, sanitary districts, regional councils of governments created pursuant to G.S. 160A-470, area mental health, developmental disabilities, and substance abuse authorities (other than single-county area authorities) established pursuant to Article 4 of Chapter 122C of the General Statutes, district health departments, regional planning and economic development commissions created pursuant to G.S. 158-14, regional sports authorities created pursuant to G.S. 160A-479, regional economic development commissions created pursuant to G.S. 158-8, regional planning commissions created pursuant to G.S. 153A-391, regional solid waste management authorities created pursuant to G.S. 153A-421, public transportation authorities created pursuant to Article 25 of Chapter 160A of the General Statutes, regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes, metropolitan sewerage districts and metropolitan water districts in this State, the North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes, the North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes, a joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station, and the Rockingham County Airport Authority. Notwithstanding the foregoing provisions of this subsection, the constituent institutions of The University of North Carolina may obtain in the manner prescribed by this subsection a refund of sales and use tax paid by them on or after January 1, 1992, for tangible personal property acquired by them through the expenditure of contract and grant funds.~~

(d) Penalties for Late Applications. -- Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above ~~shall be~~ are subject to the following penalties for late filing: applications filed within 30 days after ~~said dates,~~ the due date, twenty-five percent (25%); applications filed after 30 days but within six months after ~~said dates,~~ the due date, fifty percent (50%). ~~However, refunds which are~~ Refunds applied for ~~after~~ more than six ~~months following said dates shall be~~ months after the due date are barred.

(e) State Agencies. -- The State is allowed quarterly refunds of local sales and use taxes paid by a State agency on direct purchases of tangible personal property and local sales and use taxes paid indirectly by the State agency on building materials, supplies, fixtures, and equipment that become a part of

or annexed to a building or structure that is owned or leased by the State agency and is being erected, altered, or repaired ~~and is owned or leased~~ for use by the State agency. This subsection does not apply to purchases for which a State agency is allowed a refund under subsection (c) of this section.

A person who pays local sales and use taxes on building materials or other tangible personal property for a State building project shall give the State agency for whose project the property was purchased a signed statement containing all of the following information:

(1) The date the property was purchased.
(2) The type of property purchased.
(3) The project for which the property was used.
(4) If the property was purchased in this State, the county in which it was purchased.
(5) If the property was not purchased in this State, the county in which the property was used.
(6) The amount of sales and use taxes paid.

If the property was purchased in this State, the person shall attach a copy of the sales receipt to the statement. A State agency to whom a statement is submitted shall verify the accuracy of the statement.

Within 15 days after the end of each calendar quarter, every State agency shall file with the Secretary a written application for a refund of taxes to which this subsection applies paid by the agency during the quarter. The application shall contain all information required by the Secretary. The Secretary shall credit the local sales and use tax refunds directly to the General Fund."

Sec. 9. Effective for taxable years beginning on or after January 1, 1995, G.S. 105-228.90(b)(1) reads as rewritten:

"(1) Code. -- The Internal Revenue Code as enacted as of January 1, ~~1994~~, 1995, including any provisions enacted as of that date which become effective either before or after that date."

Sec. 10. G.S. 105-241.2(a) reads as rewritten:

"(a) Petition for Administrative Review. -- Without having to pay the tax or additional tax assessed by the Secretary under this Chapter, any taxpayer may obtain from the Tax Review Board an administrative review with respect to the taxpayer's liability for the tax or additional tax assessed by the Secretary. Such a review may be obtained only if the taxpayer has obtained a hearing before the Secretary and the Secretary has rendered a final decision with respect to the taxpayer's liability. If a taxpayer has made a timely written demand for refund of an alleged overpayment and the Secretary has issued a decision denying part or all of the claimed refund, the taxpayer may obtain from the Tax Review Board an administrative review of the Secretary's decision. To obtain administrative review the taxpayer must take the following actions:

(1) Within 30 days after the Secretary's final decision is issued, file with the Tax Review Board, with a copy to the Secretary, notice of intent to file a petition for review.
(2) Within 60 days after ~~the Secretary's final decision is issued~~, filing a notice of intent under subdivision (1) of this subsection, file with

the Tax Review Board, with a copy to the Secretary, a petition requesting administrative review and stating in concise terms the grounds upon which review is sought."

Sec. 11. G.S. 105-259(b) is amended by adding the following new subdivisions to read:

"(11a) To provide a copy of a return to the taxpayer who filed the return.

(11b) In the case of a return filed by a corporation, a partnership, a trust, or an estate, to provide a copy of the return or information on the return to a person who has a material interest in the return if, under the circumstances, section 6103(e)(1) of the Code would require disclosure to that person of any corresponding federal return or information.

(11c) In the case of a return of an individual who is legally incompetent or deceased, to provide a copy of the return to the legal representative of the estate of the incompetent individual or decedent."

Sec. 11.1. Effective January 1, 1995, G.S. 105-266(c) is amended by adding a new subdivision to read:

"(4) Federal Determination. -- When a taxpayer files with the Secretary a return that reflects a federal determination and the return is filed within the required time, the period in which a refund must be demanded or discovered is one year after the return reflecting the federal determination is filed or three years after the original return was filed or due to be filed, whichever is later."

Sec. 11.2. G.S. 105-266.1(a) reads as rewritten:

"(a) If a taxpayer claims that a tax or an additional tax paid by the taxpayer was excessive or incorrect, the taxpayer may apply to the Secretary for refund of the tax or additional tax at any time within ~~three years after the date set by the statute for the filing of the return or application for a license or within six months after the date of payment of the tax or additional tax, whichever is later,~~ the period set by the statute of limitations in G.S. 105-266.

The Secretary shall grant a hearing on each timely request for a refund. Within 60 days after a timely request for a refund has been filed and at least 10 days before the date set for the hearing, the Secretary shall notify the taxpayer in writing of the time and place at which the hearing will be conducted. The date set for the hearing shall be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the Secretary. The date set for the hearing may be postponed once, at the request of the taxpayer or the Secretary, for a period of up to 90 days or for a longer period mutually agreed upon by the taxpayer and the Secretary.

Within 90 days after conducting a hearing under this subsection, the Secretary shall make a decision on the requested refund, notify the taxpayer of the decision, and adjust the computation of the tax in accordance with the decision. The Secretary shall refund to the taxpayer in accordance with G.S. 105-266 the amount of any tax the Secretary finds was paid incorrectly

or paid in excess of the tax ~~due, except that there shall be no refund to the taxpayer of any sum set off under the provisions of Chapter 105A, the Set-off Debt Collection Act,~~ due."

Sec. 12. G.S. 105-434(a) reads as rewritten:

"(a) Tax. -- An excise tax is levied on motor fuel sold, distributed, or used by a distributor within this State at a flat rate of seventeen and one-half cents (17 1/2¢) per gallon, plus a variable rate of either three and one-half cents (3 1/2¢) per gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. The Secretary of Revenue shall semiannually determine the average wholesale price of motor fuel using information on refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel for resale, published by the United States Department of Energy in the 'Monthly Energy Review,' or equivalent data. The Secretary shall determine the average wholesale price of motor fuel by computing the average sales price of finished motor gasoline for the base period, computing the average sales price for No. 2 diesel fuel for the base period, and then computing a weighted average of the results of the first two computations based on the proportion of tax collected under this Article on motor fuel and Article 36A on fuel for the base period. The Secretary shall notify affected taxpayers of the tax rate to be in effect for each six-month period beginning January 1 and July 1.

To facilitate administration of the motor fuel tax, the Secretary shall convert the wholesale percentage component to a cents-per-gallon rate. The rate for the six-month period beginning January 1 shall be computed from data published for the six-month base period ending on the preceding September 30, and the rate for the six-month period beginning July 1 shall be computed from data published for the six-month base period ending on the preceding March 31. The cents-per-gallon rate computed by the Secretary shall be rounded to the nearest one-tenth of a cent (1/10¢). If the cents-per-gallon rate computed by the Secretary is exactly between ~~two tenths~~ two-tenths of a cent, the rate shall be rounded up to the higher of the two."

Sec. 13. G.S. 105-449.20 reads as rewritten:

"*§ 105-449.20. When Secretary may estimate tax liability of supplier or user-seller.*

Whenever a supplier or a user-seller fails to file a report under G.S. 105-449.19 or G.S. 105-449.21 or files a false report under one of those statutes, the Secretary shall determine, from any information obtainable, the number of gallons of fuel with respect to which the supplier or user-seller owes tax under this Article. When a user-seller sells or uses more fuel than the user-seller reports to the Secretary as having been purchased from a supplier, the user-seller is presumed to have acquired the unreported fuel tax-free to operate a motor vehicle. When a user-seller sells or uses more fuel to operate a motor vehicle than the user-seller reports to the Secretary as having been purchased from a supplier to operate a motor vehicle, the user-seller is presumed to have acquired tax-free to operate a motor vehicle all fuel not reported as having been acquired to operate a motor vehicle."

Sec. 13.1. G.S. 105-449.45(a) reads as rewritten:

"(a) Quarterly Report. -- A motor carrier shall report its operations to the Secretary on a quarterly basis unless this subsection exempts the motor carrier from this requirement or permits the motor carrier to report on a different basis. A motor carrier is not required to file a quarterly report if:

(1) All the motor carrier's operations during the quarter were made under a temporary permit issued under G.S. 105-449.49.

(2) ~~All the~~ The motor ~~carrier's operations during the quarter were in this State.~~ carrier is an intrastate motor carrier, as indicated on the motor carrier's application for registration with the Secretary.

(3) The motor carrier has been granted permission to file an annual report under subsection (b).

A quarterly report covers a calendar quarter and is due by the last day in April, July, October, and January."

Sec. 14. G.S. 153A-158 reads as rewritten:

"*§ 153A-158. Power to acquire ~~property in other counties.~~ property.*

A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A."

Sec. 15. (a) Chapter 885 of the 1989 Session Laws, as amended by Chapters 120, 533, 832, 848, 865, and 1001 of the 1991 Session Laws, as codified as G.S. 153A-157, and as further amended by Chapters 611, 612, 614, 622, 623, 642, and 655 of the 1993 Session Laws, is recodified as G.S. 153A-158.1(a).

(b) G.S. 153A-158.1, as amended by subsection (a) of this section, reads as rewritten:

"*§ 153A-158.1. ~~School property in certain counties; construction and other improvements; transfers.~~ Acquisition and improvement of school property in certain counties.*

(a) ~~*Power to acquire property in certain counties.*~~ Acquisition by County. -- A county may ~~acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other~~ acquire, by any lawful method, ~~the fee or any other lesser~~ any interest in real or personal property for use by ~~the county or any department, board, commission, or agency of the county or~~ a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. ~~The~~ The county shall use its authority under this ~~section~~ subsection to acquire ~~the fee or any lesser interest in real or personal~~ property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

~~This section applies to Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Chowan, Columbus, Duplin, Forsyth, Franklin, Harnett, Haywood, Iredell, Johnston, Lee, Macon, Nash, Orange, Pasquotank, Pender, Richmond, Rowan, Sampson, and Stanly Counties.~~

(b) Construction or Improvement by County. -- A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. ~~This subsection applies only to Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett,~~

~~Haywood, Lee, Macon, Nash, Orange, Pasquotank, Richmond, and Sampson Counties and to local boards of education for school administrative units in or for Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, and Pasquotank Counties.~~

(c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education ~~may~~ may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property, lease or sell ~~any of its~~ the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards. ~~This subsection applies only to Ashe, Avery, Brunswick, Cabarrus, Carteret, Chowan, Duplin, Forsyth, Harnett, Haywood, Iredell, Lee, Macon, Nash, Orange, Pasquotank, Rowan, Sampson, and Stanley Counties and to local boards of education for school administrative units in or for these counties. This subsection applies only to sales and leases of property in connection with additions, improvements, renovations, or repairs to the property or to some part of the property.~~

(d) Board of Education May Contract for Construction. -- Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, ~~local boards of education are authorized to~~ a local board of education may enter into contracts for the erection or repair of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative ~~units are~~ unit is located. ~~This subsection applies only to Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Lee, Nash, Orange, Pasquotank, and Sampson Counties and to local boards of education for school administrative units in or for those counties.~~

(e) Scope. -- This section applies to Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Chowan, Columbus, Duplin, Forsyth, Franklin, Harnett, Haywood, Iredell, Johnston, Lee, Macon, Nash, Orange, Pasquotank, Pender, Richmond, Rowan, Sampson, Stanly, and Watauga Counties."

Sec. 16. As amended by this act, G.S. 153A-158.1 now incorporates and codifies, in addition to Chapter 885 of the 1989 Session Laws as amended, the following: Chapter 487 of the 1989 Session Laws, Sections 2 and 3 of Chapter 848 of the 1991 Session Laws, Sections 2 and 3 of Chapter 1001 of the 1991 Session Laws, Sections 2 and 3 of Chapter 611 of the 1993 Session Laws, Sections 2, 3, and 4 of Chapter 612 of the 1993 Session Laws, Sections 3, 4, and 5 of Chapter 614 of the 1993 Session Laws, Sections 2, 3, and 4 of Chapters 622 and 623 of the 1993 Session Laws, Section 3(c), Section 3(e), and the first sentence of Section 3(b) of Chapter 642 of the 1993 Session Laws, and Sections 2, 3, and 4 of Chapter 655 of the 1993 Session Laws.

Sec. 17. Section 4 of Chapter 681 of the 1993 Session Laws reads as rewritten:

"Sec. 4. This act is effective for taxable years beginning on or after January 1, ~~1994~~, 1994, and ending on or before February 28, 1996."

Sec. 18. Effective January 1, 1995, Section 14 of Chapter 745 of the 1993 Session Laws is repealed.

Sec. 19. Section 1 of Chapter 922 of the 1989 Session Laws reads as rewritten:

"Section 1. Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapter 821 of the 1989 Session Laws, is further amended by adding at the end of Section 7 a new subsection to read:

'(d) Refunds. -- The local administrative authority shall refund to a nonprofit or governmental entity the prepared food and beverage tax paid by the entity on eligible purchases of prepared foods and beverages. A nonprofit or governmental entity's purchase of prepared food and beverages is eligible for a refund under this subsection if the entity is entitled to a refund under G.S. ~~105-164.14~~ 105-164.14(b) or (c) of the sales and use tax paid on the purchase. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) ~~shall~~ apply to refunds to nonprofit entities; the time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and (d) ~~shall~~ apply to refunds to governmental entities. When an entity applies for a refund of the prepared food and beverages tax paid by it on purchases, it shall attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An applicant for a refund under this subsection shall provide any information required by the local administrative authority to substantiate the claim.'"

Sec. 20. Subsection 4(e) of Chapter 449 of the 1985 Session Laws, as amended by Chapter 826 of the 1985 Session Laws and Chapter 177 of the 1991 Session Laws, reads as rewritten:

"(e) Refunds. -- The county shall refund to a nonprofit or governmental entity the prepared food and beverage tax paid by the entity on eligible purchases of prepared food and beverages. A nonprofit or governmental entity's purchase of prepared food and beverages is eligible for a refund under this subsection if the entity is entitled to a refund under G.S. ~~105-164.14~~ 105-164.14(b) or (c) of the sales and use tax paid on the purchase. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) ~~shall~~ apply to refunds to nonprofit entities; the time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and (d) ~~shall~~ apply to refunds to governmental entities. When an entity applies for a refund of the prepared food and beverages tax paid by it on purchases, it shall attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An applicant for a refund under this subsection shall provide any information required by the county to substantiate the claim."

Sec. 21. Section 6 of Chapter 413 of the 1993 Session Laws reads as rewritten:

"Sec. 6. Refunds. -- The county shall refund to a nonprofit or governmental entity the prepared food and beverage tax paid by the entity on eligible purchases of prepared food and beverages. A nonprofit or governmental entity's purchase of prepared food and beverages is eligible for a refund under this section if the entity is entitled to a refund under G.S. ~~105-164.14~~ 105-164.14(b) or (c) of ~~local~~ the sales and use tax paid on the

purchase. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) ~~shall~~ apply to refunds to nonprofit entities; the time, limitations, application requirements, penalties, and restrictions provided in G.S. ~~105-164.14(c), (d), and (e)~~ 105-164.14(c) and (d) ~~shall~~ apply to refunds to governmental entities. When an entity applies for a refund of the prepared food and beverages tax paid by it on purchases, it shall attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An applicant for a refund under this section shall provide any information required by the county to substantiate the claim."

Sec. 22. Subsection 1(f) of Chapter 449 of the 1993 Session Laws reads as rewritten:

"(f) Refunds. -- The town shall refund to a nonprofit or governmental entity the prepared food and beverage tax paid by the entity on eligible purchases of prepared food and beverages. A nonprofit or governmental entity's purchase of prepared food and beverages is eligible for a refund under this subsection if the entity is entitled to a refund under G.S. ~~105-164.14~~ 105-164.14(b) or (c) of ~~local~~ the sales and use tax paid on the purchase. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) ~~shall~~ apply to refunds to nonprofit entities; the time, limitations, application requirements, penalties, and restrictions provided in G.S. ~~105-164.14(c), (d), and (e)~~ 105-164.14(c) and (d) ~~shall~~ apply to refunds to governmental entities. When an entity applies for a refund of the prepared food and beverage tax paid by it on purchases, it shall attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An applicant for a refund under this subsection shall provide any information required by the town to substantiate the claim."

Sec. 23. Chapters 781 and 782 of the 1971 Session Laws are repealed.

Sec. 24. Except as otherwise provided in this act, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of March, 1995.

H.B. 197 **CHAPTER 18**

AN ACT TO PROVIDE A FOUR-YEAR TERM FOR THE MAYOR OF THE TOWN OF ROSEBORO.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Roseboro, being Chapter 279 of the Private Laws of 1891, is amended by adding a new section to read:

"Sec. 3.1. In 1995 and quadrennially thereafter, the qualified voters of the town shall elect a mayor for a four-year term."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of March, 1995.

H.B. 205 **CHAPTER 19**

AN ACT TO ADD ALEXANDER, BURKE, CALDWELL, AND MCDOWELL COUNTIES TO THOSE COUNTIES REQUIRING THAT ALL VESSELS CARRY PERSONAL FLOTATION DEVICES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 200 of the 1983 Session Laws reads as rewritten:

"Sec. 2. This act applies only to the counties of Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell, and Mecklenburg."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of March, 1995.

S.B. 54 **CHAPTER 20**

AN ACT TO MAKE STATUTORY CONFORMING CHANGES NECESSITATED BY AN ACT TO PROVIDE FOR A GUBERNATORIAL VETO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-33 reads as rewritten:

"§ *120-33. Duties of enrolling clerk.*

(a) All bills passed by the General Assembly shall be enrolled for ratification under the supervision of the enrolling clerk.

(b) Prior to enrolling any bill, the enrolling clerk shall substitute the corresponding Arabic numeral(s) for any date or section number of the General Statutes or of any act of the General Assembly which is written in words. The enrolled bill shall have the word 'RATIFIED' following the bill number.

(c) All bills shall be typewritten and carefully proofread before enrollment.

(d) Upon ratification of an act or joint resolution, the enrolling clerk shall ~~assign in Arabic numerals a Chapter number to each session law and~~ present one true ratified copy:

(1) To the Governor of any act except acts not required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina; and

(2) To the Secretary of State of:

a. Acts not required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina; and

b. Joint resolutions.

In the case of any bill presented to the Governor, the enrolling clerk shall write upon the bill the time and date presented to the Governor. ~~deposit the ratified laws and joint resolutions with one true copy of each with the Secretary of State.~~

(d1) The enrolling clerk shall present to the Secretary of State one true ratified copy of:

(1) Any bill which has become law with the approval of the Governor as provided by G.S. 120-29.2(a);

(2) Any bill which has become law without the approval of the Governor as provided by G.S. 120-29.2(b); and

(3) Any bill which has become law notwithstanding the objections of the Governor, as provided by G.S. 120-29.2(c).

(d2) No bill required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina shall be so presented until the time for moving a reconsideration shall have expired, unless expressly ordered by that house where such bill was ordered enrolled.

~~(e) The enrolling clerk shall furnish each member of the General Assembly with a legible conformed copy of all laws and joint resolutions of the General Assembly, which shall show the Chapter number of any law or the number of any joint resolution, in conformity with the number assigned to the enactment.~~

(f) The enrolling clerk upon completion of ~~his~~ duties after each session shall deposit the original bills and resolutions enrolled for ratification ~~by him~~ with the Secretary of State."

Sec. 2. Chapter 120 of the General Statutes is amended by adding a new section to read:

"*§ 120-29.2. Approval of bills.*

(a) If the Governor approves a bill, the Governor shall write upon the same, to the left of and below the signatures of the presiding officers of the two houses, the fact, date, and time of approval, as follows: 'Approved .m. this day of , ' and shall sign the same as follows: ' Governor'. The Governor shall then return the approved bill to the enrolling clerk.

(b) If any bill becomes law because of the failure of the Governor to take any action, it shall be the duty of the Governor to return the measure to the enrolling clerk, who shall sign the following certificate on the measure and deposit it with the Secretary of State: 'This bill having been presented to the Governor for his signature on the day of , and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This day of , . Enrolling Clerk'.

(c) If the Governor returns any bill to the house of origin with his objections, the Governor shall write such objections on the measure or cause the objections to be attached to the measure. When any such bill becomes law after reconsideration of the two houses, the presiding officers shall, below the objections of the Governor, sign the following certificate: 'Became law notwithstanding the objections of the Governor, .m. this day of , '. The second of them to sign shall fill in the time. The enrolling clerk shall deposit the measure with the Secretary of State."

Sec. 3. G.S. 120-20 reads as rewritten:

"*§ 120-20. When acts take effect.*

Acts of the General Assembly shall be in force only from and after ~~30~~ 60 days after the adjournment of the session in which they shall have passed,

unless the commencement of the operation thereof be expressly otherwise directed."

Sec. 4. G.S. 120-30.9B(1) reads as rewritten:

"(1) Within 30 days of ~~ratification~~ the time they become laws all acts of the General Assembly that amend, delete, add to, modify or repeal any provision of Chapter 163 of the General Statutes or any other statewide legislation, except relating to Chapter 7A of the General Statutes, which constitutes a 'change affecting voting' under Section 5 of the Voting Rights Act of 1965; and".

Sec. 5. G.S. 120-30.9C reads as rewritten:

"*§ 120-30.9C. The judicial system; Administrative Office of the Courts.*

The Administrative Officer of the Courts shall submit to the Attorney General of the United States within 30 days of ~~ratification~~ the time they become laws all acts of the General Assembly that amend, delete, add to, modify or repeal any provision of Chapter 7A of the General Statutes of North Carolina which constitutes a 'change affecting voting' under Section 5 of the Voting Rights Act of 1965."

Sec. 6. G.S. 120-30.9E reads as rewritten:

"*§ 120-30.9E. Counties; County Attorney.*

The County Attorney of any county covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 ~~days of ratification or adoption any local acts of the General Assembly,~~ days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the county board of commissioners, or the county board of elections or any other county agency which constitutes a 'change affecting voting' under Section 5 of the Voting Rights Act of 1965 in that county."

Sec. 7. G.S. 120-30.9F reads as rewritten:

"*§ 120-30.9F. Municipalities; municipal attorney.*

The municipal attorney of any municipality covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 ~~days of ratification any local acts of the General Assembly,~~ days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the municipal governing body or municipal board of elections or any other municipal agency which constitutes a 'change affecting voting' under Section 5 of the Voting Rights Act of 1965 in that municipality; provided that, if required or allowed by regulations or practices of the United States Department of Justice, a municipal attorney may delay submission of any annexation ordinance or group of ordinances until all previously submitted annexation ordinances have been precleared or otherwise received final disposition."

Sec. 8. G.S. 120-30.9G(b) reads as rewritten:

"(b) The attorney for any local board of education where that school administrative unit is covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 ~~days of ratification any local acts of the General Assembly, or~~ days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the local boards of education which constitutes a 'change affecting voting' under Section 5 of the Voting Rights Act of 1965 in that school administrative unit. If the change affecting voting is a merger of two or more school administrative units, the change shall be submitted jointly by the attorneys of the school administrative units involved, or by one of them by agreement of the attorneys involved."

Sec. 9. G.S. 147-36(1) reads as rewritten:

"(1) To ~~attend at every session of the legislature for the purpose of receiving bills which shall have become laws, and to~~ perform such ~~other~~ duties as may then be devolved upon him by resolution of the two ~~Houses,~~ houses of the General Assembly or either of them;".

Sec. 10. Rule 9(h) of the Rules of Civil Procedure, G.S. 1A-1, reads as rewritten:

"(h) Private statutes. In pleading a private statute or right derived therefrom it is sufficient to refer to the statute by its title or the day of its ratification if ratified before January 1, 1996, or the date it becomes law if it becomes law on or after January 1, 1996, and the court shall thereupon take judicial notice of it."

Sec. 11. G.S. 97-31.1 reads as rewritten:

"*§ 97-31.1. Effective date of legislative changes in benefits.*

Every act of the General Assembly that changes the benefits enumerated in this Chapter shall ~~have a ratification date of~~ become law no later than June 1 and shall have an effective date of no earlier than January 1 of the year after which it is ratified."

Sec. 12. G.S. 120-34(a) reads as rewritten:

"(a) The Legislative Services Commission shall publish all laws and joint resolutions passed at each session of the General Assembly. The laws and joint resolutions shall be kept separate and indexed separately. Each volume shall contain a certificate from the Secretary of State stating that the volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the Office of the Secretary of State. The Commission may publish the Session Laws and House and Senate Journals of extra and special sessions of the General Assembly in the same volume or volumes as those of regular sessions of the General Assembly. In printing, the signatures of the presiding officers and the Governor shall be omitted.

The enrolling clerk or the Legislative Services Office shall assign to each bill that becomes law a number in the order the bill became law, and the laws shall be printed in the Session Laws in that order. The number shall be preceded by the letters 'S.L.' followed by the calendar year it was ordered enrolled, followed by a hyphen and the sequential law number. Laws of Extra Sessions shall so indicate. In the case of any bill required to be presented to the Governor, and which became law, the Session Laws shall carry, below the date of ratification, editorial notes as to what time and what date the bill became law. In any case where the Governor has

returned a bill to the General Assembly with objections, those objections shall be printed verbatim in the Session Laws, regardless of whether or not the bill became law notwithstanding the objections."

Sec. 13. G.S. 120-133 reads as rewritten:

"§ *120-133. Redistricting communications.*

Notwithstanding any other provision of law, all drafting and information requests to legislative employees and documents prepared by legislative employees for legislators concerning redistricting the North Carolina General Assembly or the Congressional Districts are no longer confidential and become public records upon the ~~ratification of the~~ act establishing the relevant district plan becoming law. Present and former legislative employees may be required to disclose information otherwise protected by G.S. 120-132 concerning redistricting the North Carolina General Assembly or the Congressional Districts upon the ~~ratification of the~~ act establishing the relevant district plan becoming law."

Sec. 14. G.S. 120-149.3 reads as rewritten:

"(c) If a legislative proposal receives a favorable report but ~~is not ratified~~ does not become law during the biennial session in which it is introduced, a new assessment report shall be required before the same or a substantially similar legislative proposal may be considered after first reading or by any committee during a subsequent biennial session of the General Assembly. If a proposal receives a favorable report but is not introduced as a legislative proposal, the favorable report shall expire at the adjournment of the biennial session coinciding with or following issuance of the final report."

Sec. 15. G.S. 130A-51(a) reads as rewritten:

"(a) When the General Assembly incorporates a city or town that includes within its territory fifty percent (50%) or more of the territory of a sanitary district, the governing body of the city or town shall become ex officio the governing board of the sanitary district if the General Assembly provides for this action in the incorporation act and if the existing sanitary district board adopts a final resolution pursuant to this section. The resolution may be adopted at any time within the period beginning on the day ~~of ratification of~~ the incorporation act becomes law and ending 270 days after ~~the effective~~ that date."

Sec. 15.1. Article 2 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ *120-6.1. Request that reconvened session not be held.*

(a) As provided by Section 22(7) of Article II of the Constitution of North Carolina, if within 30 days after adjournment, a bill is returned by the Governor with objections and veto message to that house in which it shall have originated, the Governor shall reconvene that session as provided by Section 5(11) of Article III of the Constitution for reconsideration of the bill, unless the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider vetoed legislation is unnecessary.

(b) The form for the requests shall be:

'To the Governor:

A reconvened session to reconsider vetoed legislation is unnecessary.

This day of ,
, Member of the [Senate] [House of Representatives]'

Petitions as they are received are public records and shall be maintained by the Office of the Governor."

Sec. 16. G.S. 103-5 reads as rewritten:

"*§ 103-5. Acts to be done on Sunday or holidays.*

(a) Where the day or the last day for doing an act required or permitted by law to be done falls on Sunday or a holiday the act may be done on the next succeeding secular or business day and where the courthouse in any county is closed on Saturday or any other day by order of the board of county commissioners of said county and the day or the last day required for filing an advance bid or the filing of any pleading or written instrument of any kind with any officer having an office in the courthouse, or the performance of any act required or permitted to be done in said courthouse falls on Saturday or other day during which said courthouse is closed as aforesaid, then said Saturday or other day during which said courthouse is closed as aforesaid shall be deemed a holiday; and said advance bid, pleading or other written instrument may be filed, and any act required or permitted to be done in the courthouse may be done on the next day during which the courthouse is open for business.

(b) This section does not apply where the act required or permitted by law to be done is prescribed by Section 22 of Article II, or Section 5(11) of Article III, of the Constitution of North Carolina."

Sec. 17. Sections 1 through 16 of this act shall become effective only if the constitutional amendments proposed by Sections 1 and 2 of Chapter 5 of the Session Laws of 1995 are approved as provided by Sections 3 and 4 of Chapter 5 of the Session Laws of 1995, and if so approved, Sections 1 through 16 of this act shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Sec. 18. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of April, 1995.

S.B. 220 **CHAPTER 21**

AN ACT TO PROVIDE COUNTIES WITH INFORMATION TO ENABLE THEM TO VERIFY CLAIMS FOR REFUNDS OF THEIR LOCAL SALES AND USE TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.14 is amended by adding a new subsection to read:

"(f) Information to Counties. -- Upon written request of a county, the Secretary shall, within 30 days after the request, provide the chair of the board of county commissioners a list of each claimant that has, within the past 12 months, received a refund under subsection (b) or (c) of this section of at least one thousand dollars ($1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of the

refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection (b) or (c) of this section shall provide the chair of the board of county commissioners a copy of the request for the refund and any supporting documentation requested by the county to verify the request. Information provided to a county under this subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection (b) or (c) of this section is incorrect, it shall file an amended request for the refund."

Sec. 2. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(6a) To furnish the chair of a board of county commissioners a list of claimants that have received a refund of the county sales or use tax to the extent authorized in G.S. 105-164.14(f)."

Sec. 3. This act becomes effective July 1, 1995. Notwithstanding the provisions of G.S. 105-164.14(f), as added by this act, for requests received under that subsection before July 1, 1996, the Secretary of Revenue is not required to provide the requested list until 90 days after receiving the request.

In the General Assembly read three times and ratified this the 4th day of April, 1995.

H.B. 33 **CHAPTER 22**

AN ACT TO INCREASE THE ANNUAL RENEWAL FEE FOR A REAL ESTATE LICENSE AND TO REQUIRE PAYMENT OF THE APPLICATION FEE EACH TIME AN APPLICANT TAKES THE REAL ESTATE EXAMINATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93A-4 reads as rewritten:

"*§ 93A-4. Applications for licenses; fees; qualifications; examinations; bond; privilege licenses; renewal or reinstatement of license; power to enforce provisions.*

(a) Any person, partnership, association, or corporation hereafter desiring to enter into business of and obtain a license as a real estate broker or real estate salesman shall make written application for such license to the Commission on such forms as are prescribed by the Commission. Each applicant for a license as a real estate broker or real estate salesman shall be at least 18 years of age. Each applicant for a license as a real estate salesman shall, within five years preceding the date application is made, have satisfactorily completed, at a school approved by the Commission, a real estate fundamentals course consisting of at least 30 hours of classroom instruction in subjects determined by the Commission, or possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the course. Each applicant for a license as a real estate broker shall, within five years preceding the date the application is made, either have been actively engaged on a full-time basis as a licensed real estate salesman for at least two years, or have satisfactorily completed,

at a school approved by the Commission, advanced courses in Real Estate Law, Real Estate Finance, and Real Estate Brokerage Operations, each consisting of at least 30 hours of classroom instruction, these courses to be in addition to those required for a real estate salesman license, or possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the above requirements. Each application for license as a real estate broker shall be accompanied by a fee, fixed by the Commission but not to exceed thirty dollars ($30.00). Each application for license as a real estate salesman shall be accompanied by a fee, fixed by the Commission but not to exceed thirty dollars ($30.00).

(b) Any person who files such application to the Commission in proper manner for a license as real estate broker or a license as real estate salesman shall be required to take an oral or written examination to determine his qualifications with due regard to the paramount interests of the public as to the honesty, truthfulness, integrity and competency of the applicant.

The Commission may make such investigation as it deems necessary into the ethical background of the applicant. If the results of the examination and investigation shall be satisfactory to the Commission, then the Commission shall issue to such a person a license, authorizing such person to act as a real estate broker or real estate salesman in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law. ~~Anyone failing to pass an examination may be reexamined without payment of additional fee, under such rules as the Commission may adopt in such cases.~~

Provided, however, that any person who, at the time of the passage or at the effective date of this Chapter, has a license to engage in, and is engaged in business as a real estate broker or real estate salesman and who shall file a sworn application with the Commission setting forth his qualifications, including a statement that such applicant has not within five years preceding the filing of the application been convicted of any felony or any misdemeanor involving moral turpitude, shall not be required to take or pass such examination, but all such persons shall be entitled to receive such license from the Commission under the provisions of this Chapter on proper application therefor and payment of a fee of ten dollars ($10.00).

(c) All licenses issued by the Commission under the provisions of this Chapter shall expire on the 30th day of June following issuance or on any other date that the Commission may determine and shall become invalid after that date unless reinstated. A license may be renewed 45 days prior to the expiration date by filing an application with and paying to the Executive Director of the Commission the ~~fee required by the Commission, which may not exceed twenty-five dollars ($25.00),~~ license renewal fee. The license renewal fee is thirty dollars ($30.00) unless the Commission sets the fee at a higher amount. The Commission may set the license renewal fee at an amount that does not exceed fifty dollars ($50.00). The license renewal fee may not increase by more than five dollars ($5.00) during a 12-month period. The Commission may adopt rules establishing a system of license renewal in which the licenses expire annually with varying expiration dates. These rules shall provide for prorating the annual fee to cover the initial

renewal period so that no licensee shall be charged an amount greater than the annual fee for any 12-month period. All licenses reinstated after the expiration date thereof shall be subject to a late filing fee of five dollars ($5.00) in addition to the required renewal fee. In the event a licensee fails to obtain a reinstatement of such license within 12 months after the expiration date thereof, the Commission may, in its discretion, consider such person as not having been previously licensed, and thereby subject to the provisions of this Chapter relating to the issuance of an original license, including the examination requirements set forth herein. Duplicate licenses may be issued by the Commission upon payment of a fee of five dollars ($5.00) by the licensee. Commission certification of a licensee's license history shall be made only after the payment of a fee of ten dollars ($10.00).

(d) The Commission is expressly vested with the power and authority to make and enforce any and all such reasonable rules and regulations connected with the application for any license as shall be deemed necessary to administer and enforce the provisions of this Chapter. The Commission is further authorized to adopt rules and regulations necessary for the approval of real estate schools and such rules and regulations may, in accordance with G.S. 93A-4(a), prescribe specific requirements pertaining to the teaching of mechanics and law governing real estate transactions at such schools.

(e) Nothing contained in this Chapter shall be construed as giving any authority to the Commission nor any licensee of the Commission as authorizing any licensee whether by examination or under the grandfather clause or by comity to engage in the practice of law or to render any legal service as specifically set out in G.S. 84-2.1 or any other legal service not specifically referred to in said section."

Sec. 2. This act is effective upon ratification and applies to applications for a license or for renewal of a license filed on or after that date.

In the General Assembly read three times and ratified this the 4th day of April, 1995.

H.B. 377 **CHAPTER 23**

AN ACT TO TRANSFER TO THE CHARLOTTE DEPARTMENT OF TRANSPORTATION THE AUTHORITY TO APPROVE CHANGES TO STREET NAMES WITHIN THAT CITY.

The General Assembly of North Carolina enacts:

Section 1. Section 6.209 of the Charter of the City of Charlotte, being Chapter 713 of the Session Laws of 1965, as added by Chapter 347 of the Session Laws of 1985, reads as rewritten:

"Section 6.209. The ~~Charlotte-Mecklenburg Planning Commission~~ Charlotte Department of Transportation may hear and approve requests to change or modify street names within the City of Charlotte. Any person dissatisfied with a decision of the ~~Planning Commission~~ Department may appeal to the City Council. In the event of an appeal, the City Council may

affirm, modify, or overturn the decision of the ~~Planning Commission.~~ Department. The decision of the City Council on appeal shall be final."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of April, 1995.

S.B. 167 **CHAPTER 24**

AN ACT TO ALLOW COUNTIES NOT TO BILL FOR PROPERTY TAXES ON CERTAIN VEHICLES WHEN THE AMOUNT DUE ON THE TAX BILL IS LESS THAN THE COST OF PREPARING AND SENDING THE BILL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-330.5 is amended by adding a new subsection to read:

"(b1) Notwithstanding the provisions of G.S. 105-380, the board of county commissioners may, by resolution, direct the tax collector to treat as fully paid minimal taxes billed on a tax notice required by subsection (a) of this section. The taxes billed on a tax notice are minimal under this subsection when the total county, municipal, and special district taxes billed on the notice do not exceed an amount up to five dollars ($5.00) set by the board of county commissioners in the resolution. The amount set by the board should be the estimated cost to the county of billing a taxpayer for the taxes on a notice. The tax collector shall not bill the taxpayer for these minimal taxes but shall keep a record of the taxes by taxpayer and amount and shall report the taxes to the board of county commissioners as part of the settlement for the year. A resolution adopted pursuant to this subsection shall become effective no earlier than 30 days after its adoption and shall apply to registration lists received under subsection (a) of this section on or after the date the resolution becomes effective. The resolution remains in effect until amended or repealed by resolution of the board of county commissioners. Upon adoption of a resolution pursuant to this subsection, minimal taxes to which the resolution applies are considered fully paid."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of April, 1995.

S.B. 286 **CHAPTER 25**

AN ACT TO REQUIRE LABORATORIES TO PERFORM COMPOSITE TESTING OF WATER SAMPLES AS PART OF THE LABORATORY CERTIFICATION PROGRAM IN AN EFFORT TO REDUCE COSTS OF WATER TESTS.

The General Assembly of North Carolina enacts:

Section 1. Section 130A-315 of Chapter 130A of the General Statutes is amended by adding a new subsection to read:

"(b3) The Department shall not certify or renew a certification of a laboratory under rules adopted pursuant to subdivision (3)b. of subsection (b) of this section unless the laboratory offers to perform composite testing of samples taken from a single public water supply system for those contaminants that the laboratory is seeking certification or renewal of certification to the extent allowed by regulations adopted by the United States Environmental Protection Agency."

Sec. 2. This act is effective upon ratification. Laboratories certified prior to the effective date of this act shall have a 30 day grace period in which to comply. The Department shall revoke any certification or renewal of a certification from any laboratory that does not offer to perform composite testing of water samples within 30 days of the effective date of this act.

In the General Assembly read three times and ratified this the 6th day of April, 1995.

S.B. 333 **CHAPTER 26**

AN ACT TO AUTHORIZE THE ADDITION OF RUN HILL STATE NATURAL AREA TO THE STATE PARKS SYSTEM.

Whereas, Section 5 of Article XIV of the State Constitution states that it shall be a proper function of the State of North Carolina to acquire and preserve park, recreational, and scenic areas and, in every other appropriate way, to preserve as a part of the common heritage of this State its open lands and places of beauty; and

Whereas, the General Assembly enacted the State Parks Act in 1987, declaring that the State of North Carolina offers unique archaeological, geological, biological, scenic, and recreational resources, and that such resources are part of the heritage of the people of the State to be preserved and managed by those people for their use and for the use of their visitors and descendants; and

Whereas, Run Hill in Dare County is one of the last remaining examples of a large, active dune formation; is an essential part of the Jockeys Ridge/Nags Head Woods ecosystem; and has been found to possess geological and biological resources of statewide significance; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The General Assembly authorizes the Department of Environment, Health, and Natural Resources to add the Run Hill State Natural Area to the State Parks System. This act authorizes the addition of the Run Hill State Natural Area to the State Parks System as provided in G.S. 113-44.14(b), except that in lieu of an appropriation for this purpose, the Run Hill State Natural Area shall be added to the State Parks System upon the acquisition of the land required for the Run Hill State Natural Area with funds approved for this purpose by the Natural Heritage Trust Fund Board of Trustees under G.S. 113-77.9.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of April, 1995.

H.B. 161 **CHAPTER 27**

AN ACT TO PROVIDE THE PUBLIC WITH ACCESS TO LOW-COST TELECOMMUNICATIONS SERVICE IN A CHANGING COMPETITIVE ENVIRONMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-2 reads as rewritten:

"*§ 62-2. Declaration of policy.*

Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

(1) To provide fair regulation of public utilities in the interest of the public;

(2) To promote the inherent advantage of regulated public utilities;

(3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;

(3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills.

(4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

(4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plant under construction;

(5) To encourage and promote harmony between public utilities, their users and the environment;

(6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;

(7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development; and

(8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply.

(9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of an expansion fund for each natural gas local distribution company to be administered under the supervision of the North Carolina Utilities Commission.

To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission.

Because of technological changes in the equipment and facilities now available and needed to provide telephone and telecommunications services, changes in regulatory policies by the federal government, and changes resulting from the court-ordered divestiture of the American Telephone and Telegraph Company, competitive offerings of certain types of telephone and telecommunications services may be in the public interest. Consequently, authority shall be vested in the North Carolina Utilities Commission to allow competitive offerings of local exchange, exchange access, and long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in accordance with the provisions of G.S. ~~62-110,~~ 62-110, and the Commission is further authorized after notice to affected parties and hearing to deregulate or to exempt from regulation under any or all provisions of this Chapter: (i) a service provided by any public utility as defined in G.S. 62-3(23)a.6. upon a finding that such service is competitive and that such deregulation or exemption from regulation is in the public interest; or (ii) a public utility as defined in G.S. 62-3(23)a.6., or a portion of the business of such public utility, upon a finding that the service or business of such public utility is competitive and that such deregulation or exemption from regulation is in the public interest.

The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regulation by the North Carolina Utilities Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985.

The North Carolina Utilities Commission may develop regulatory policies to govern the provision of telecommunications services to the public which promote efficiency, technological innovation, economic growth, and permit telecommunications utilities a reasonable opportunity to compete in an emerging competitive environment, giving due regard to consumers, stockholders, and maintenance of reasonably affordable local exchange service and long distance service."

Sec. 2. G.S. 62-3 is amended by adding a new subdivision to read:

"(7a) 'Competing local provider' means any person applying for a certificate to provide local exchange or exchange access services in competition with a local exchange company."

Sec. 3. G.S. 62-3 is amended by adding a new subdivision to read:

"(16a) 'Local exchange company' means a person holding, on January 1, 1995, a certificate to provide local exchange services or exchange access services."

Sec. 4. G.S. 62-110 is amended by adding three new subsections to read:

"(f1) Except as provided in subsection (f2) of this section, the Commission is authorized, following notice and an opportunity for interested parties to be heard, to issue a certificate to any person applying to provide local exchange or exchange access services as a public utility as defined in G.S. 62-3(23)a.6., without regard to whether local telephone service is already being provided in the territory for which the certificate is sought, provided that the person seeking to provide the service makes a satisfactory showing to the Commission that (i) the person is fit, capable, and financially able to render such service; (ii) the service to be provided will reasonably meet the service standards that the Commission may adopt; (iii) the provision of the service will not adversely impact the availability of reasonably affordable local exchange service; (iv) the person, to the extent it may be required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and (v) the provision of the service does not otherwise adversely impact the public interest. In its application for certification, the person seeking to provide the service shall set forth with particularity the proposed geographic territory to be served and the types of local exchange and exchange access services to be provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate under this section shall, until otherwise determined by the Commission, file and maintain with the Commission a complete list of the local exchange and exchange access services to be provided and the prices charged for those services, and shall be subject to such reporting requirements as the Commission may require.

Any certificate issued by the Commission pursuant to this subsection shall not permit the provision of local exchange or exchange access service until July 1, 1996, unless the Commission shall have approved a price regulation plan pursuant to G.S. 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996. In the event a price regulation plan becomes effective prior to July 1, 1996, the Commission is authorized to permit the provision of local exchange or exchange access service by a

competing local provider in the franchised area of such local exchange company.

The Commission is authorized to adopt rules it finds necessary (i) to provide for the reasonable interconnection of facilities between all providers of telecommunications services; (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the reasonable unbundling of essential facilities where technically and economically feasible; (iv) to provide for the transfer of telephone numbers between providers in a manner that is technically and economically reasonable; (v) to provide for the continued development and encouragement of universally available telephone service at reasonably affordable rates; and (vi) to carry out the provisions of this subsection in a manner consistent with the public interest, which will include a consideration of whether and to what extent resale should be permitted.

Local exchange companies and competing local providers shall negotiate the rates for local interconnection. In the event that the parties are unable to agree within 90 days of a bona fide request for interconnection on appropriate rates for interconnection, either party may petition the Commission for determination of the appropriate rates for interconnection. The Commission shall determine the appropriate rates for interconnection within 180 days from the filing of the petition.

Each local exchange company shall be the universal service provider in the area in which it is certificated to operate on July 1, 1995, until otherwise determined by the Commission. In continuing this State's commitment to universal service, the Commission shall, by December 31, 1996, adopt interim rules that designate the person that should be the universal service provider and to determine whether universal service should be funded through interconnection rates or through some other funding mechanism. By July 1, 1998, the Commission shall complete an investigation and adopt final rules concerning the provision of universal services, the person that should be the universal service provider, and whether universal service should be funded through interconnection rates or through some other funding mechanism.

The Commission shall make the determination required pursuant to this subsection in a manner that furthers this State's policy favoring universally available telephone service at reasonable rates.

(f2) The provisions of subsection (f1) of this section shall not be applicable to franchised areas within the State that are being served by local exchange companies with 200,000 access lines or less located within the State, and it is further provided that such local exchange company providing service to 200,000 access lines or less shall not be subject to the regulatory reform procedures outlined under the terms of G.S. 62-133.5(a) or permitted to compete in territory outside of its franchised area for local exchange and exchange access services until such time as the franchised area is opened to competing local providers as provided for in this subsection. Upon the filing of an application by a local exchange company with 200,000 access lines or less for regulation under the provisions of G.S. 62-133.5(a), the Commission shall apply the provisions of that section to such local exchange company, but only upon the condition that the

provisions of subsection (f1) of this section are to be applicable to the franchised area and local exchange and exchange access services offered by such a local exchange company.

(f3) The provisions of subsection (f1) of this section shall not be applicable to areas served by telephone membership corporations formed and existing under Article 4 of Chapter 117 of the General Statutes and exempt from regulation as public utilities, pursuant to G.S. 62-3(23)d. and G.S. 117-35."

Sec. 5. G.S. 62-133.3 is repealed.

Sec. 6. Article 7 of Chapter 62 is amended by adding a new section to read:

"*§ 62-133.5. Alternative regulation, tariffing, and deregulation of telecommunications utilities.*

(a) Any local exchange company, subject to the provisions of G.S. 62-110(f1), that is subject to rate of return regulation pursuant to G.S. 62-133 or a form of alternative regulation authorized by subsection (b) of this section may elect to have the rates, terms, and conditions of its services determined pursuant to a form of price regulation, rather than rate of return or other form of earnings regulation. Under this form of price regulation, the Commission shall, among other things, permit the local exchange company to determine and set its own depreciation rates, to rebalance its rates, and to adjust its prices in the aggregate, or to adjust its prices for various aggregated categories of services, based upon changes in generally accepted indices of prices. Upon application, the Commission shall, after notice and an opportunity for interested parties to be heard, approve such price regulation, which may differ between local exchange companies, upon finding that the plan as proposed (i) protects the affordability of basic local exchange service, as such service is defined by the Commission; (ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards that the Commission may adopt; (iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and (iv) is otherwise consistent with the public interest. Upon approval, and except as provided in subsection (c) of this section, price regulation shall thereafter be the sole form of regulation imposed upon the electing local exchange company, and the Commission shall thenceforth regulate the electing local exchange company's prices, rather than its earnings. The Commission shall issue an order denying or approving the proposed plan for price regulation, with or without modification, not more than 90 days from the filing of the application. However, the Commission may extend the time period for an additional 90 days at the discretion of the Commission. If the Commission approves the application with modifications, the local exchange company subject to such approval may accept the modifications and implement the proposed plan as modified, or may, at its option, (i) withdraw its application and continue to be regulated under the form of regulation that existed immediately prior to the filing of the application; (ii) file another proposed plan for price regulation; or (iii) file an application for a form of alternative regulation under subsection (b) of this section. If the initial price regulation plan is approved with modifications and the local exchange company files another

plan pursuant to part (ii) of the previous sentence, the Commission shall issue an order denying or approving the proposed plan for price regulation, with or without modifications, not more than 90 days from that filing by the local exchange company.

(b) Any local exchange company that is subject to rate of return regulation pursuant to G.S. 62-133 and which elects not to file for price regulation under the provisions of subsection (a) above may file an application with the Commission for forms of alternative regulation, which may differ between companies and may include, but are not limited to, ranges of authorized returns, categories of services, and price indexing. Upon application, the Commission shall approve such alternative regulatory plan upon finding that the plan as proposed (i) protects the affordability of basic local exchange service, as such service is defined by the Commission; (ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards established by the Commission; (iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and (iv) is otherwise consistent with the public interest. The Commission shall issue an order denying or approving the proposed plan with or without modification, not more than 90 days from the filing of the application. However, the Commission may extend the time period for an additional 90 days at the discretion of the Commission. If the Commission approves the application with modifications, the local exchange company subject to such approval may, at its option, accept the modifications and implement the proposed plan as modified or may, at its option, (i) withdraw its application and continue to be regulated under the form of regulation that existed at the time of filing the application; or (ii) file an application for another form of alternative regulation. If the initial plan is approved with modifications and the local exchange company files another plan pursuant to part (ii) of the previous sentence, the Commission shall issue an order denying or approving the proposed plan, with or without modifications, not more than 90 days from that filing by the local exchange company.

(c) Any local exchange company subject to price regulation under the provisions of subsection (a) of this section may file an application with the Commission to modify such form of price regulation or for other forms of regulation. Any local exchange company subject to a form of alternative regulation under subsection (b) of this section may file an application with the Commission to modify such form of alternative regulation. Upon application, the Commission shall approve such other form of regulation upon finding that the plan as proposed (i) protects the affordability of basic local exchange service, as such service is defined by the Commission; (ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards established by the Commission; (iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and (iv) is otherwise consistent with the public interest.

(d) Any local exchange company subject to price regulation under the provisions of subsection (a) of this section, or other alternative regulation under subsection (b) of this section, or other form of regulation under

subsection (c) of this section shall file tariffs for basic local exchange service and toll switched access services stating the terms and conditions of the services and the applicable rates. The filing of any tariff changing the terms and conditions of such services or increasing the rates for such services shall be presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, 14 days after filing. Any tariff reducing rates for basic local exchange service or toll switched access service shall be presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, seven days after filing. Any local exchange company subject to price regulation under the provisions of subsection (a) of this section, or other alternative regulation under subsection (b) of this section, or other form of regulation under subsection (c) of this section may file tariffs for services other than basic local exchange services and toll switched access services. Any tariff changing the terms and conditions of such services or increasing the rates for an existing service or establishing the terms, conditions, or rates for a new service shall be presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, 14 days after filing. Any tariff reducing the rates for such services shall be presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, seven days after filing. In the event of a complaint with regard to a tariff filing under this subsection, the Commission may take such steps as it deems appropriate to assure that such tariff filing is consistent with the plan previously adopted pursuant to subsection (a) of this section, subsection (b) of this section, or subsection (c) of this section.

(e) Any allegation of anticompetitive activity by a competing local provider or a local exchange company shall be raised in a complaint proceeding pursuant to G.S. 62-73.

(f) Notwithstanding the provisions of G.S. 62-140, the Commission shall permit a local exchange company or a competing local provider to offer competitive services with flexible pricing arrangements to business customers pursuant to contract and shall permit other flexible pricing options.

(g) The following sections of Chapter 62 of the General Statutes shall not apply to local exchange companies subject to price regulation under the terms of subsection (a) of this section: G.S. 62-35(c), 62-45, 62-51, 62-81, 62-111, 62-130, 62-131, 62-132, 62-133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153."

Sec. 6.1. On October 1, 1997, and every two years thereafter, the Utilities Commission and the Public Staff shall each provide a report to the Joint Legislative Utility Review Committee summarizing the procedures conducted pursuant to the provisions of this act during the preceding two years ending on July 1 immediately preceding the report date. The reports shall recommend whether the provisions of this act should be continued, repealed, or amended.

Sec. 7. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 6th day of April, 1995.

S.B. 207 CHAPTER 28

AN ACT TO MODIFY THE BOND REQUIREMENTS FOR PUBLIC UTILITIES PROVIDING WATER OR SEWER SERVICES AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-110.3 reads as rewritten:

"§ *62-110.3. Bond required for water and sewer companies.*

(a) No franchise may be granted to any water or sewer utility company until the applicant furnishes a bond, secured with sufficient surety as approved by the Commission, in an amount not less than ten thousand dollars ~~($10,000) nor more than two hundred thousand dollars ($200,000).~~ ($10,000). The bond shall be conditioned upon providing adequate and sufficient service within all the applicant's service areas, including those for which franchises have previously been granted, shall be payable to the Commission, and shall be in a form acceptable to the Commission. In setting the amount of a bond, the Commission shall ~~consider:~~ consider and make appropriate findings as to the following:

(1) Whether the applicant holds other water or sewer franchises in this State, and if so its record of operation,

(2) The number of customers the applicant now serves and proposes to serve,

(3) The likelihood of future expansion needs of the service,

(4) If the applicant is acquiring an existing company, the ~~age~~ age, condition, and type of the equipment, and

(5) Any other relevant ~~factors.~~ factors, including the design of the system.

Any interest earned on a bond shall be payable to the water or sewer company that posted the bond.

~~(b) The Commission shall not require an applicant to post the bond required by subsection (a) if:~~

~~(1) The applicant has posted a bond for the water or sewer system with another State government agency and the Commission finds that that bond satisfies the purposes of this section; or~~

~~(2) The applicant has posted bonds for other water or sewer systems with the Commission totalling two hundred thousand dollars ($200,000).~~

(b) Notwithstanding the provisions of G.S. 62-110(a) and subsection (a) of this section, no water or sewer utility shall extend service into territory contiguous to that already occupied without first having advised the Commission of such proposed extension. Upon notification, the Commission shall require the utility to furnish an appropriate bond, taking into consideration both the original service area and the proposed extension. This subsection shall apply to all service areas of water and sewer utilities without regard to the date of the issuance of the franchise.

(c) The utility, the Public Staff, the Attorney General, and any other party may, at any time after the amount of a bond is set, apply to the Commission to raise or lower the amount based on changed circumstances.

(d) The appointment of an emergency operator, either by the superior court in accordance with G.S. 62-118(b) or by the Commission with the consent of the owner or operator, operates to forfeit the bond required by this section. The court or Commission, as appropriate, shall determine the amount of money needed to alleviate the emergency and shall order that amount of the bond to be paid to the Commission as trustee for the water or sewer system.

(e) If the person who operated the system before the emergency was declared desires to resume operation of the system upon a finding that the emergency no longer exists, the Commission shall require him to post a new bond, the amount of which may be different from the previous bond."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of April, 1995.

H.B. 188 **CHAPTER 29**

AN ACT TO EXTEND TO THE CITY OF LUMBERTON PROVISIONS OF A LOCAL ACT WHICH PROVIDE THAT SERVICE IN HOUSING CODE CASES IS SUFFICIENT WHEN A REGULAR LETTER IS SENT OUT ALONG WITH A REGISTERED OR CERTIFIED LETTER, AND THE REGULAR LETTER IS NOT RETURNED, BUT THE REGISTERED OR CERTIFIED MAIL IS UNCLAIMED OR REFUSED.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 578 of the 1993 Session Laws reads as rewritten:

"Sec. 2. This act applies to the ~~City of Greensboro~~ Cities of Greensboro and Lumberton only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of April, 1995.

H.B. 313 **CHAPTER 30**

AN ACT TO AMEND THE CHARTER OF THE CITY OF MOUNT AIRY TO CHANGE FROM PARTISAN TO NONPARTISAN THE METHOD OF ELECTING THE MAYOR AND BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. Section 11a of the Charter of the City of Mount Airy, being Chapter 160 of the Private Laws of 1925, as enacted by Chapter 496 of the 1943 Session Laws, is rewritten to read:

"Sec. 11a. Method of Election.

The Mayor and Commissioners shall be elected by the nonpartisan primary and election method as provided in G.S. 163-294, with the two board members who are apportioned to each ward being required to reside in said ward, and with all candidates being nominated and elected by all the qualified voters of the City of Mount Airy."

Sec. 2. This act is effective upon ratification and applies beginning with the 1995 city election.

In the General Assembly read three times and ratified this the 10th day of April, 1995.

H.B. 317 **CHAPTER 31**

AN ACT RELATING TO ELECTIONS OF THE CITY OF WINSTON-SALEM AND THE COUNTY OF FORSYTH SO THAT THE GENERAL LAW WILL APPLY ON SHARING OF COSTS OF THE COUNTY BOARD OF ELECTIONS.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter of 734 of the 1955 Session Laws is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of April, 1995.

S.B. 265 **CHAPTER 32**

AN ACT TO ADD CALDWELL COUNTY TO THE AREAS COVERED BY THE STATEWIDE FOX MANAGEMENT PLAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-291.4A(a) reads as rewritten:

"(a) There is an open season for the taking of foxes with firearms in all areas of the State east of Interstate Highway 77 and in Mitchell ~~County~~ and Caldwell Counties from the beginning of the season established by the Wildlife Resources Commission for the taking of rabbits and quail through January 1 of each year. The selling, buying, or possessing for sale of any fox or fox part taken pursuant to this subsection is prohibited, and is punishable as provided by G.S. 113-294(a) or (k)."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of April, 1995.

S.B. 152 **CHAPTER 33**

AN ACT TO PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION SHALL PAY FOR THE NONBETTERMENT RELOCATION OF SANITARY DISTRICT UTILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-27.1 reads as rewritten:

"*§ 136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or sewer corporations or associations.*

The Department of Transportation shall pay the nonbetterment cost for the relocation of water and sewer lines, located within the existing State highway right-of-way, that are necessary to be relocated for a State highway improvement project and that are owned by: (i) a municipality with a population of 5,500 or less according to the latest decennial census; (ii) a nonprofit water or sewer association or corporation; (iii) any water or sewer system organized pursuant to Chapter 162A of the General Statutes; ~~or~~ (iv) a rural water system operated by county as an enterprise ~~system.~~ system; or (v) any sanitary district organized pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of April, 1995.

H.B. 145 **CHAPTER 34**

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE CITY OF ROANOKE RAPIDS.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Roanoke Rapids is revised and consolidated to read:

"THE CHARTER OF THE CITY OF ROANOKE RAPIDS.

"ARTICLE I.

"INCORPORATION, CORPORATE POWERS AND BOUNDARIES.

"Section 1.1. *Incorporation.* The City of Roanoke Rapids, North Carolina in Halifax County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'City of Roanoke Rapids', hereinafter at times referred to as the 'City'.

"Sec. 1.2. *Powers.* The City shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the City of Roanoke Rapids specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Sec. 1.3. *Corporate Boundaries.* The corporate boundaries shall be those existing at the time of ratification of this Charter, as set forth on the official map of the City and as they may be altered from time to time in accordance with law. An official map of the City, showing the current municipal boundaries and the boundaries of the electoral districts therein, shall be maintained permanently in the office of the City Clerk and shall be available for public inspection. Upon alteration of the corporate limits or electoral districts pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the office of the Secretary of State, the Halifax County Register of Deeds and the appropriate board of elections.

"Sec. 1.4. *Form of Government.* The City shall operate under the council-manager form of government, in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"ARTICLE II. GOVERNING BODY.

"Sec. 2.1. *City Governing Body; Composition.* The Mayor and the City Council, hereinafter referred to as the 'Council', shall be the governing body of the City.

"Sec. 2.2. *City Council; Composition; Terms of Office.* The Council shall be composed of five members, two to be elected by and from the qualified voters of District 1, two to be elected by and from the qualified voters of District 2, and one to be elected by and from the qualified voters of District 3, for staggered terms of four years or until their successors are elected and qualified.

"Sec. 2.3. *Mayor; Term of Office; Duties.* The Mayor shall be elected by all the qualified voters of the City for a term of four years or until his or her successor is elected and qualified. The Mayor shall be the official head of the City government and preside at meetings of the Council, shall have the right to vote only when there is an equal division on any question or matter before the Council, and shall exercise the powers and duties conferred by law or as directed by the Council.

"Sec. 2.4. *Mayor Pro Tempore.* The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the Council.

"Sec. 2.5. *Meetings; Quorum; Voting Requirements.* In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law. Notwithstanding the contrary provisions of G.S. 160A-74, a majority of the members elected to the Council shall constitute a quorum for the conduct of business. In the absence of a quorum, a lesser number may adjourn from time to time and compel the attendance of absent members in such manner as may be prescribed by ordinance. Official actions of the Council and all votes shall be taken in accordance with the applicable provisions of general law, particularly G.S. 160A-75.

"Sec. 2.6. *Compensation; Qualifications for Office; Vacancies.* The compensation and qualifications of the Mayor and Council members shall be in accordance with general law. Vacancies that occur in any elective office of the City shall be filled for the remainder of the unexpired term, despite the contrary provisions of G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Sec. 3.1. *Regular Municipal Elections.* Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Sec. 3.2. *Electoral District Boundaries.* The City shall be divided into three districts. The district boundaries are those existing at the time of

ratification of this Charter, as set forth on the official map of the City and as they may be altered from time to time in accordance with general law.

"Sec. 3.3. *Election of Mayor.* A Mayor shall be elected in the regular municipal election in 1997 and every four years thereafter.

"Sec. 3.4. *Election of Council Members.* In the regular municipal election in 1995, and every four years thereafter, one Council member shall be elected by and from each of the three districts. In the regular municipal election in 1997, and every four years thereafter, one Council member shall be elected by and from Districts 1 and 2.

"Sec. 3.5. *Special Elections and Referenda.* Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. CITY MANAGER.

"Sec. 4.1. *City Manager; Appointment; Powers and Duties.* The Council shall appoint a City Manager who shall be responsible for the administration of all departments of the City government. The City Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Council, so far as authorized by general law.

"Sec. 4.2. *Manager's Personnel Authority; Role of Elected Officials.* As chief administrator, the City Manager shall have the power to appoint and remove all officers, department heads, and employees in the administrative service of the City, except the City Attorney, who shall be appointed as provided in Section 5.1 of this Charter. Neither the Mayor nor the Council nor any of its members shall give orders or directions to any subordinate of the Manager, either publicly or privately.

"Sec. 4.3. *Residency.* At the time of appointment, the City Manager need not be a resident of the City, but shall reside therein during the tenure of office.

"Sec. 4.4. *Eligibility of Council Members.* No person elected as a member of the City Council shall be eligible for appointment as City Manager until one year shall have elapsed following the expiration of the term for which the Council member was elected.

"Sec. 4.5. *Absence or Disability.* In case of the absence or disability of the Manager, the Council may designate a qualified administrative officer of the City to perform the duties of the Manager during such absence or disability.

"ARTICLE V. ADMINISTRATIVE OFFICERS AND EMPLOYEES.

"Sec. 5.1. *City Attorney.* The City Council shall appoint a City Attorney licensed to practice law in North Carolina. It shall be the duty of the City Attorney to represent the City, advise City officials, and perform other duties required by law or as the Council may direct.

"Sec. 5.2. *City Clerk.* The City Manager shall appoint a City Clerk to keep a journal of the proceedings of the Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Manager may direct.

"Sec. 5.3. *Tax Collector.* The City shall have a Tax Collector to collect all taxes owed to the City and perform those duties specified in G.S. 105-350 and such other duties as prescribed by law or assigned by the City

Manager. Notwithstanding the contrary provisions of G.S. 105-349, the Manager may appoint and remove the Tax Collector.

"Sec. 5.4. *Director of Finance.* The City Manager shall appoint a Director of Finance to perform the duties designated in G.S. 159-25 and such other duties as may be prescribed by law or assigned by the Manager.

"Sec. 5.5. *Consolidation of Functions.* The City Manager may, with the approval of the City Council, consolidate any two or more of the positions of City Clerk, Director of Finance, and Tax Collector, or may assign the functions of any one or more of these positions to the holder or holders of any other of these positions. The Manager may also, with the approval of the Council, designate a single employee to perform the functions of the named offices, in lieu of appointing several persons to perform the same.

"Sec. 5.6. *Other Administrative Officers and Employees.* The Council may authorize other positions to be filled by appointment by the City Manager, and may organize the City government as deemed appropriate, subject to the requirements of general law.

"ARTICLE VI. STREET IMPROVEMENTS.

"Sec. 6.1. *Assessments for Street Improvements; Petition Unnecessary.* In addition to any authority granted by general law, the Council may, without the necessity of a petition, order street improvements and assess the costs thereof against abutting property, exclusive of the costs incurred at street intersections, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes, upon the following findings of fact:

(1) The street improvement project does not exceed 1,200 linear feet; and

(2) a. The street or part thereof is unsafe for vehicular traffic or creates a safety or health hazard, and it is in the public interest to make such improvement;

b. It is in the public interest to connect two streets, or portions of a street already improved; or

c. It is in the public interest to widen a street, or part thereof, which is already improved; provided, that assessments for widening any street or portion of a street without a petition shall be limited to the cost of widening and otherwise improving such street in accordance with street classification and improvement standards established by the City's thoroughfare or major street plan for the particular street or part thereof.

"Sec. 6.2. *Street Improvement Defined.* For the purposes of this Article, the term 'street improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curbs, gutters, and street drainage facilities.

"Sec. 6.3. *Procedure; Effect of Assessment.* In ordering street improvements without a petition and assessing the costs thereof under authority of this Article, the Council shall comply with the procedures provided by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to petitions of property owners and the sufficiency

thereof. The effect of the act of levying assessments under authority of this Article shall be the same as if the assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes.

"ARTICLE VII. SIDEWALKS.

"Sec. 7.1. *Property Owner's Responsibility.* It shall be the duty of every property owner in the City to keep clean and free of debris, trash, and other obstacles or impediments, the sidewalks abutting his property.

"Sec. 7.2. *City Cleaning or Repair; Costs Become Lien.* The City Council may by ordinance establish a procedure whereby City forces may remove from any sidewalk any debris, trash, ice or snow upon failure of the abutting property owner after 24-hours notice to do so. In such event, the cost of such removal shall become a lien upon the abutting property equal to the lien for ad valorem taxes and may thereafter be collected either by suit in the name of the City or by foreclosure of the lien in the same manner and subject to the same rules, regulations, costs, and penalties as provided by law for the foreclosure of the lien on real estate for ad valorem taxes.

"ARTICLE VIII. FINANCE AND TAXATION.

"Sec. 8.1. *Motor Vehicle Tag Tax.* The City is authorized to levy a license tax upon any motor vehicle resident therein in the amount of six dollars ($6.00) per year, or in the amount authorized by G.S. 20-97(a), whichever is greater.

"ARTICLE IX. PROPERTY DISPOSITION.

"Sec. 9.1. *Disposal of Surplus Personal Property.* The City may dispose of personal property valued at less than four thousand dollars ($4,000) for any one item or group of items using the procedures authorized in G.S. 160A-266(c).

"ARTICLE X. CLAIMS AGAINST THE CITY.

"Sec. 10.1. *Settlement of Claims by City Manager.* The Council may authorize the City Manager to settle claims against the City for (i) personal injuries or damages to property when the amount involved does not exceed the sum of five hundred dollars ($500.00) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expenses actually incurred; and (ii) the taking of small portions of private property which are needed for the rounding of corners at intersections of streets, when the amount involved in any such settlement does not exceed five hundred dollars ($500.00) and does not exceed the actual loss sustained. Settlement of a claim by the City Manager pursuant to this section shall constitute a complete release of the City from any and all damages sustained by the person involved in such settlement in any manner arising out of the accident, occasion, or taking complained of. All such settlements and all such releases shall be approved in advance by the City Attorney.

"ARTICLE XI. FIREMEN'S SUPPLEMENTAL RETIREMENT FUND.

"Sec. 11.1. *Firemen's Supplemental Retirement Fund.* The Roanoke Rapids Firemen's Supplemental Retirement Fund shall continue as authorized by Chapter 312, Session Laws of 1977, as amended by Chapter 247, Session Laws of 1989, and any subsequent acts."

Sec. 2. The purpose of this act is to revise the Charter of the City of Roanoke Rapids and to consolidate certain acts concerning the property, affairs, and government of the City. It is intended to continue without

interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Sec. 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools, or any acts validating official actions, proceedings, contracts, or obligations of any kind.

Sec. 4. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 67, Public-Local Laws of 1937, Section 3
Chapter 987, Session Laws of 1965
Chapter 1054, Session Laws of 1967, except for Section 4, which is not repealed
Chapter 164, Session Laws of 1969
Chapter 390, Session Laws of 1969
Chapter 481, Session Laws of 1969
Chapter 1072, Session Laws of 1969
Chapter 188, Session laws of 1971
Chapter 259, Session Laws of 1971
Chapter 810, Session Laws of 1971
Chapter 811, Session Laws of 1971
Chapter 368, Session Laws of 1973
Chapter 455, Session Laws of 1977
Chapter 570, Session Laws of 1989.

Sec. 5. The election of Council members by and from districts in 1992 and 1993 pursuant to an election plan ordered by consent decree is hereby validated. The Mayor and Council members serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified. Thereafter those offices shall be filled as provided in Articles II and III of the Charter contained in Section 1 of this act.

Sec. 6. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Sec. 7. All existing ordinances, resolutions, and other provisions of the City of Roanoke Rapids not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Sec. 8. No action or proceeding pending on the effective date of this act by or against the City or any of its departments or agencies shall be abated or otherwise affected by this act.

Sec. 9. If any provision of this act or application thereof is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 10. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of April, 1995.

H.B. 211 **CHAPTER 35**

AN ACT AMENDING THE CHARTER OF THE CITY OF GREENSBORO TO AUTHORIZE THE CITY COUNCIL TO REQUIRE OWNERS OF RENTAL PROPERTY WITHIN THE CITY TO AUTHORIZE AN AGENT TO ACCEPT SERVICE OF PROCESS.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Greensboro, being Chapter 1137 of the 1959 Session Laws as amended, is further amended by adding a new section to read:

"Sec. 5.76. *Owner of rental property shall authorize agent to accept service of process.* -- The City Council may, by ordinance, require that each owner of rental property within the city authorize a person residing in Guilford County to serve as his or her agent for the purpose of accepting service of process in an action involving a violation of an inspection ordinance adopted under Parts 5 or 6 of Article 19 of Chapter 160A of the General Statutes. The owner shall provide, on a form supplied by the Housing Inspection Department, the authorized agent's name, address, and phone number. The owner shall notify the Housing Inspection Department of any changes in the information provided not more than 10 days after such changes have occurred. Nothing in this section shall require an owner to designate an agent to accept service of process where the owner of the rental property resides within the city."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of April, 1995.

S.B. 365 **CHAPTER 36**

AN ACT TO PROVIDE FOR THE TAKING OF NONGAME FISH WITH BOW AND ARROW UNDER AUTHORITY OF OTHER HUNTING AND FISHING LICENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-275 is amended by adding a new subsection to read:

"(k) A person may use a bow and arrow to take nongame fish in inland and joint fishing waters subject to any applicable rule of the Wildlife Resources Commission regarding seasons, creel limits, type of weapon or subsidiary gear, or any other restriction necessary for the conservation of wildlife under the authority of the following licenses:

(1) All of the combination hunting and fishing licenses issued pursuant to G.S. 113-270.1C;

(2) All of the sportsman licenses issued pursuant to G.S. 113-270.1D;

(3) The hunting licenses issued pursuant to G.S. 113-270.2(c)(1), (2), (3), (5), and (6);

(4) The hook-and-line fishing licenses issued pursuant to G.S. 113-271(d)(1), (2), (3), (4), (5), (6), (8), and (9); and

(5) All of the special device fishing licenses issued pursuant to G.S. 113-272.2."

Sec. 2. G.S. 113-272.2(d) is repealed.

Sec. 3. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 17th day of April, 1995.

H.B. 345 **CHAPTER 37**

AN ACT TO AUTHORIZE THE TOWN OF YAUPON BEACH TO CREATE A SEA TURTLE SANCTUARY.

The General Assembly of North Carolina enacts:

Section 1. The Town of Yaupon Beach may create and establish a sea turtle sanctuary within the areas of the town limits above the mean low watermark, to include the foreshore. Any ordinance adopted by the town to regulate activities within the sea turtle sanctuary which may or will disturb or destroy a sea turtle, a sea turtle nest, or sea turtle eggs must be consistent with the ordinance powers found in G.S. 160A-174, G.S. 160A-308, and any other law. The ordinance adopted by the town may by cross-reference incorporate the criminal statutes regarding the taking of sea turtles at G.S. 113-189 and G.S. 113-337. It shall be unlawful for any person within the sea turtle sanctuary to disturb or destroy a sea turtle, a sea turtle nest, or sea turtle eggs in violation of an ordinance adopted by the Town of Yaupon Beach.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of April, 1995.

H.B. 372 **CHAPTER 38**

AN ACT TO PROVIDE THAT THE MADISON COUNTY BOARD OF EDUCATION SHALL TAKE OFFICE IN JULY OF THE YEAR OF THEIR ELECTION.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 249 of the 1991 Session Laws reads as rewritten:

"Sec. 5. The terms of office of the members and chairman of the Madison County Board of Education commence on the first Monday in ~~December~~ July of the year of their ~~election.~~ election, except if that date is the Fourth of July, then the terms commence on the second Monday in July."

Sec. 2. Terms of office of members of the Madison County Board of Education elected in 1994 for two-year terms expire on the first Monday in

July of 1996. Terms of office of members of the Madison County Board of Education elected in 1994 for four-year terms expire on the first Monday in July of 1998. The term of office of the chairman of the Board of Education of Madison County elected in 1994 for a four-year term expires on the first Monday in July of 1998.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of April, 1995.

H.B. 374 **CHAPTER 39**

AN ACT TO AMEND THE EXTENSION OF BEAR HUNTING SEASON IN PASQUOTANK AND CAMDEN COUNTIES AND TO INCLUDE CHOWAN COUNTY IN THAT EXTENSION OF THE SEASON.

The General Assembly of North Carolina enacts:

Section 1. Chapter 220 of the 1993 Session Laws reads as rewritten:

"Section 1. Notwithstanding any other provision of law, the season for hunting black bear shall run from ~~two days~~ the Friday and Saturday prior to the date established by the Wildlife Resources Commission as the start of bear season until the date established by the Wildlife Resources Commission as the end of bear season.

Sec. 2. This act applies only to ~~Pasquotank and Camden~~ Pasquotank, Camden, and Chowan counties.

Sec. 3. This act is effective upon ratification."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of April, 1995.

H.B. 401 **CHAPTER 40**

AN ACT TO RETAIN CERTIFIED LAW ENFORCEMENT OFFICERS FOR THE STATE MUSEUM OF ART.

The General Assembly of North Carolina enacts:

Section 1. Section 34 of Chapter 321 of the 1993 Session Laws, as amended by Section 12.4 of Chapter 769 of the 1993 Session Laws, is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of April, 1995.

S.B. 8 **CHAPTER 41**

AN ACT TO REPEAL THE INTANGIBLES TAX AND TO REIMBURSE LOCAL GOVERNMENTS FOR THEIR RESULTING REVENUE LOSS.

The General Assembly of North Carolina enacts:

Section 1. (a) Effective July 1, 1995, G.S. 105-213.1 is recodified as G.S. 105-275.2 and G.S. 105-213 is repealed.

(b) Effective January 1, 1995, the remainder of Article 7 of Chapter 105 of the General Statutes is repealed. The Secretary of Revenue shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost for the 1995-96 fiscal year of collecting, administering, and refunding the taxes levied in Article 7 of Chapter 105 of the General Statutes.

Sec. 2. G.S. 105-275 is amended by adding the following new subdivisions:

"(31a) Accounts receivable.

(31b) Bonds, notes, and other evidences of debt.

(31c) Shares of stock, including shares and units of ownership of mutual funds, investment trusts, and investment funds.

(31d) The beneficial or equitable interest in a trust, trust fund, or trust account, including custodial accounts, held by a foreign fiduciary."

Sec. 3. G.S. 105-213.1, as recodified as G.S. 105-275.2 by Section 1 of this act, reads as rewritten:

"*§ 105-275.2. Reimbursement to counties and municipalities for ~~partial~~ repeal of State tax on intangible personal property.*

(a) Reimbursement for Repeal of Tax on Money on Deposit, Money on Hand, and Funds on Deposit with Insurance Companies. -- On or before August 30 of each year, the Secretary of Revenue shall allocate for distribution to each county and the municipalities in the county the amount allocated to the county under this subsection in 1990.

~~Amounts allocated to a county under this subsection shall in turn be divided and distributed between the county and the municipalities located in the county in accordance with the method of allocating intangible tax revenue between a county and the municipalities located in the county provided in G.S. 105-213.~~

(a1) Reimbursement for Partial Repeal of Tax on Accounts Receivable. -- On or before August 30 of each year, the Secretary of Revenue shall distribute to counties and municipalities an amount equal to forty percent (40%) of the tax collected on accounts receivable under former Article 7 of this Chapter (repealed) during the 1989-90 fiscal year. ~~The Secretary of Revenue shall first allocate the amount to be distributed in this subsection to the counties in the same manner as the amount allocated in G.S. 105-213. The amount allocated to each county shall in turn be divided and distributed between the county and the municipalities located in the county in accordance with the method of allocating intangible tax revenue between a county and the municipalities located in the county provided in G.S. 105-213.~~ The Secretary shall allocate this amount among the counties in proportion to the amount allocated to each county under former G.S. 105-213 (repealed) in August 1994.

(a2) Reimbursement for Repeal of Tax on Accounts Receivable, Bonds, Stocks, and Foreign Trust Interests. -- On or before August 30 of each year, the Secretary shall distribute the sum of ninety-five million three hundred thirty-one thousand nine hundred twenty-seven dollars

($95,331,927) to counties and municipalities. The Secretary shall allocate this amount among the counties in proportion to the amount allocated to each county under former G.S. 105-213 (repealed) in August 1994.

(a3) Distribution Between County and Its Municipalities. -- The amounts allocated to each county under this section shall be allocated between the county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. In dividing these amounts between each county and its municipalities, the Secretary of Revenue shall treat taxes levied by a merged school administrative unit described in G.S. 115C-513 in a part of the unit located in a county as taxes levied by the county in which that part is located.

After making these allocations, the Secretary shall certify to the State Controller and to the State Treasurer the amount to be distributed to each county and municipality in the State. The State Controller shall then issue a warrant on the State Treasurer to each county and municipality in the amount certified.

For the purpose of computing the distribution to any county and the municipalities located in the county for any year with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the county and the municipalities in the county, the Department shall use the last property valuation of the public service company that has been certified.

The chair of each board of county commissioners and the mayor of each municipality shall report to the Secretary of Revenue information requested by the Secretary to enable the Secretary to allocate the amount distributed by this section. If a county or municipality fails to make a requested report within the time allowed, the Secretary may disregard the county or municipality in allocating the amount distributed by this section.

(b) Restrictions on Use. -- ~~Amounts distributed to a county or a municipality under this section are subject to the same restrictions as amounts distributed under G.S. 105-213.~~ The amount distributed to each county and municipality shall be used by the county or municipality in proportion to property tax levies made by it for the various funds and activities of the county or municipality, unless the county or municipality has pledged the amount to be distributed to it under this section in payment of a loan agreement with the North Carolina Solid Waste Management Capital Projects Financing Agency. A county or municipality that has pledged amounts distributed under this section in payment of a loan agreement with the Agency may apply the amount the loan agreement requires.

~~(c) Municipality Defined. -- As used in this section, the term 'municipality' has the same meaning as in G.S. 105-213.~~

(d) Source. -- Funds distributed under this section shall be drawn from collections received under Division II of Article 4 of this Chapter."

Sec. 4. G.S. 105-501 reads as rewritten:

"*§ 105-501. Distribution of additional taxes.*

The Secretary shall, on a quarterly basis, allocate the net proceeds of the additional one-half percent (1/2%) sales and use taxes levied under this Article to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary shall then adjust the amount allocated to each county as provided in G.S. 105-486(b). The amount allocated to each taxing county shall then be divided among the county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed.

If any taxes levied under this Article by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the Secretary shall distribute a pro rata share to that county for that quarter based on the number of months the taxes were collected in that county during the quarter.

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-fourth of the costs during the preceding fiscal year of:

(1) The Department of Revenue in performing the duties imposed by Article 15 of this Chapter.
(2) The Property Tax Commission.
(3) The Institute of Government in operating a training program in property tax appraisal and assessment.
(4) The personnel and operations provided by the Department of State Treasurer for the Local Government Commission."

Sec. 5. G.S. 105-288(d) reads as rewritten:

"(d) Expenses. -- The members of the Property Tax Commission shall receive travel and subsistence expenses in accordance with G.S. 138-5 and a salary of two hundred dollars ($200.00) a day when hearing cases. The Secretary of Revenue shall supply all the clerical and other services required by the Commission. All expenses of the Commission and the Department of Revenue in performing the duties enumerated in this Article shall be paid ~~from funds appropriated out of revenue derived from the tax on intangible personal property as provided by G.S. 105-213.~~ as provided in G.S. 105-501."

Sec. 6. G.S. 105-276 reads as rewritten:

"*§ 105-276. Taxation of intangible personal property.*

Intangible personal property that is not excluded from taxation under G.S. ~~105-275(31) or classified under Schedule H, G.S. 105-198 through G.S. 105-217,~~ 105-275 is subject to this Subchapter. ~~The classification of such property for taxation under Schedule H shall not exclude the property from the system property valuation of public service companies under Article 23 provided proper adjustments are made to prevent duplicate taxation.~~"

Sec. 7. G.S. 105-282.1(a)(2) reads as rewritten:

"(2) Owners of the special classes of property excluded from taxation under G.S. 105-275(5), (15), (16), (26), (31), (31a), (31b), (31c), (31d), (32a), (33), (34), or (40), or exempted under G.S. 105-278.2 are not required to file applications for the exclusion or exemption of that property."

Sec. 8. G.S. 105-305 reads as rewritten:

"*§ 105-305. Place for listing intangible personal property.*

(a) Listing Instructions. -- This section ~~shall apply~~ applies to all taxable intangible personal property that has a tax situs in this ~~State, that~~ State and is not required by this Subchapter to be appraised originally by the Department of ~~Revenue, and that is not subject to taxation under the provisions of Schedule H, G.S. 105-198 through 105-217.~~ Revenue. The place in this State at which ~~such~~ this property is taxable shall be determined ~~according to the rules prescribed in subsections (b) through (e), below.~~ as provided in this section. The person whose duty it is to list property shall list it in the county in which the place of taxation is located, indicating on the abstract the information required by G.S. 105-309(d). If the place of taxation lies within a city or town that requires separate listing under G.S. 105-326(a), the person whose duty it is to list shall also list the property for taxation in the city or town.

(b) General Rule. -- Except as otherwise provided in subsections (c) through ~~(e), below,~~ (e) of this section, intangible personal property shall be taxable at the residence of the owner. For the purposes of this section:

(1) The residence of a person who has two or more places in this State at which ~~he~~ the person occasionally dwells shall be the place ~~at which he~~ the person dwelt for the longest period of time during the calendar year immediately preceding the date as of which property is to be listed for taxation.

(2) The residence of a domestic or foreign taxpayer other than an individual person shall be the place at which its principal North Carolina office is located.

(c) Intangible personal property representing an interest or interests in real property that is situated in this State shall be taxable in the place in which the represented real property is located.

(d) The intangible personal property of a decedent whose estate is in the process of administration or has not been distributed shall be taxable in the place at which it would be taxable if the decedent were still alive and still residing in the place at which ~~he~~ the decedent resided at the time of ~~his~~ death.

(e) Intangible personal property within the jurisdiction of the State held by a resident or nonresident trustee, guardian, or other fiduciary having legal title to the property shall be taxable in accordance with the following rules:

(1) If ~~any~~ a beneficiary is a resident of the State, an amount representing ~~his~~ the beneficiary's portion of the property shall be taxable in the place at which it would be taxable if ~~he~~ the beneficiary were the owner of ~~his~~ that portion.

(2) If ~~any~~ a beneficiary is a nonresident of the State, an amount representing ~~his~~ the beneficiary's portion of the property shall be taxable in the place at which it would be taxable if the fiduciary were the beneficial owner of the property."

Sec. 9. G.S. 108A-93 reads as rewritten:

"*§ 108A-93. Withholding of State moneys from counties failing to pay public assistance costs.*

The Director of the Budget ~~is authorized to~~ may withhold from any county that does not pay its full share of public assistance costs to the State and has not ~~arranged for payment pursuant to G.S. 108-54.1 or~~ obtained a loan for repayment under G.S. 108A-89, any State moneys appropriated from the General Fund for public assistance and related administrative costs, or ~~to~~ may direct the Secretary of Revenue and State ~~Treasurer~~ Controller to withhold any tax owed to a county under ~~Article 7 of Chapter 105 of the General Statutes,~~ G.S. 105-113.82, ~~Article 39 of Chapter 105 of the General Statutes~~ Subchapter VIII of Chapter 105 of the General Statutes, or Chapter 1096 of the Session Laws of 1967. The Director of the Budget shall notify the ~~chairman~~ chair of the board of county commissioners of the proposed action prior to the withholding of funds."

Sec. 10. G.S. 142-12.1(c) reads as rewritten:

"(c) The interest on any ~~such~~ of these bonds or obligations shall maintain its existing exemption from State income taxation, or other taxation, if any, ~~including, but not limited to, the tax on intangible personal property now imposed by the State,~~ notwithstanding that ~~such~~ the interest may be or become subject to federal income taxation as a result of legislative action by the federal government."

Sec. 11. Section 1(a) of this act becomes effective July 1, 1995. Section 1(b) of this act is effective for taxable years beginning on or after January 1, 1995. Sections 3, 4, 5, and 9 of this act become effective July 1, 1995, and apply to distributions made on or after that date. The remainder of this act is effective for taxable years beginning on or after January 1, 1995.

This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

In the General Assembly read three times and ratified this the 18th day of April, 1995.

H.B. 2 **CHAPTER 42**

AN ACT TO REDUCE INCOME TAXES FOR THE LOWER AND MIDDLE-INCOME PEOPLE OF NORTH CAROLINA BY INCREASING THE PERSONAL EXEMPTION DEDUCTION BY FIVE HUNDRED DOLLARS AND BY ALLOWING A TAX CREDIT OF SIXTY DOLLARS PER DEPENDENT CHILD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-134.6(c)(4) reads as rewritten:

"(4) The amount by which the taxpayer's standard deduction has been increased for inflation under section 63(c)(4)(A) of the ~~Code and the amount by which the taxpayer's personal exemptions have been increased for inflation under section 151(d)(4)(A) of the Code. For the purpose of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable~~

~~percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage.~~ Code."

Sec. 2. (a) Effective for taxable years beginning on or after January 1, 1995, G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(4a) The amount by which each of the taxpayer's personal exemptions have been increased for inflation under section 151(d)(4)(A) of the Code, less two hundred fifty dollars ($250.00) if the taxpayer's adjusted gross income (AGI), as calculated under the Code, is less than the following amounts:

Filing Status	AGI
Married, filing jointly	$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000.

For the purposes of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage."

(b) Effective for taxable years beginning on or after January 1, 1996, G.S. 105-134.6(c)(4a), as enacted by subsection (a) of this section, reads as rewritten:

"(4a) The amount by which each of the taxpayer's personal exemptions have been increased for inflation under section 151(d)(4)(A) of the Code, less ~~two hundred fifty dollars ($250.00)~~ five hundred dollars ($500.00) if the taxpayer's adjusted gross income (AGI), as calculated under the Code, is less than the following amounts:

Filing Status	AGI
Married, filing jointly	$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000.

For the purposes of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage."

Sec. 3. Division II of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"*§ 105-151.24. Credit for children.*

An individual whose adjusted gross income (AGI), as calculated under the Code, is less than the amount listed below is allowed a credit against the tax imposed by this Division in an amount equal to sixty dollars ($60.00) for each dependent child for whom the individual was allowed to deduct a personal exemption under section 151(c)(1)(B) of the Code for the taxable year:

Filing Status	AGI
Married, filing jointly	$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000.

A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

Sec. 4. Section 2(a) of this act is effective for taxable years beginning on or after January 1, 1995; Section 2(b) of this act is effective for taxable years beginning on or after January 1, 1996; the remainder of this act is effective for taxable years beginning on or after January 1, 1995.

In the General Assembly read three times and ratified this the 18th day of April, 1995.

H.B. 103 **CHAPTER 43**

AN ACT TO STRENGTHEN THE INSURANCE FRAUD LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-2-161 reads as rewritten:

"*§ 58-2-161. False statement to procure or deny benefit of insurance policy or certificate.*

(a) For the purposes of this ~~section~~ section:

(1) ~~'insurer'~~ 'Insurer' includes an entity under Articles 49 and 65 through 67 of this ~~Chapter and includes~~ Chapter, the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General ~~Statutes.~~ Statutes, and an employer or group of employers that insure its workers' compensation liability under Chapter 97 of the General Statutes.

(2) 'Statement' includes any application, notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, X rays, test result, or other evidence of loss, injury, or expense.

(b) Any person ~~who willfully and knowingly presents or causes to be presented a false or fraudulent claim, or any proof in support of such claim, to an insurer for the payment of a loss or other benefits under any insurance policy, certificate, or coverage; or prepares, makes, or subscribes to a false or fraudulent account, certificate, affidavit, proof of loss, or other documents or writing, to an insurer, with the intent that the same may be presented or used in support of such claim, shall be guilty of a felony and, upon conviction, shall be punished as a Class I felon.~~ who, with the intent to injure, defraud, or deceive an insurer or insurance claimant:

(1) Presents or causes to be presented a written or oral statement, including computer-generated documents as part of, in support of,

or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning any fact or matter material to the claim, or

(2) Assists, abets, solicits, or conspires with another person to prepare or make any written or oral statement that is intended to be presented to an insurer or insurance claimant in connection with, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning a fact or matter material to the claim

is guilty of a Class H felony. Each claim shall be considered a separate count. Upon conviction, if the court imposes probation, the court may order the defendant to pay restitution as a condition of probation. In determination of the amount of restitution pursuant to G.S. 15A-1343(d), the reasonable costs and attorneys' fees incurred by the victim in the investigation of, and efforts to recover damages arising from, the claim, may be considered part of the damage caused by the defendant arising out of the offense.

In a civil cause of action for recovery based upon a claim for which a defendant has been convicted under this section, the conviction may be entered into evidence against the defendant. The court may award the prevailing party compensatory damages, attorneys' fees, costs, and reasonable investigative costs. If the prevailing party can demonstrate that the defendant has engaged in a pattern of violations of this section, the court may award treble damages."

Sec. 2. This act becomes effective October 1, 1995, and applies to violations occurring on or after that date.

In the General Assembly read three times and ratified this the 18th day of April, 1995.

S.B. 232 **CHAPTER 44**

AN ACT TO ALLOW MEMBERS OF THE ONSLOW COUNTY BOARD OF ALCOHOL CONTROL TO SERVE THREE CONSECUTIVE TERMS.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 1134 of the 1979 Session Laws reads as rewritten:

"Section 1. The Onslow County Board of Alcohol Control shall have five members to be appointed as provided in G.S. 18A-16. Members serving on the board on the effective date of this act may continue to serve until their terms expire. The two new members required by this act shall be appointed no later than July 1, 1980, as follows:

(1) one member shall be appointed for a two-year term;

(2) one member shall be appointed for a three-year term.

After each term has expired, each successor in office shall serve a three-year term. Members serving on the board on the effective date of this act may

not succeed themselves. Each of the two new members established by this act may be appointed to serve one three-year term immediately following his first term. Thereafter, no member may serve more than ~~two~~ three consecutive terms. This prohibition does not prevent a member appointed to complete part of an unexpired term from serving ~~two~~ three full three-year terms after completion of the unexpired term."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of April, 1995.

H.B. 115 **CHAPTER 45**

AN ACT TO MODIFY THE APPOINTMENT OF THE HALIFAX ABC BOARD AND TO PROVIDE THAT DISTRIBUTION OF REVENUE SHALL BE ACCORDING TO GENERAL STATUTE.

Whereas, the 1959 Session of the General Assembly passed a local law providing for proposed alternative structures for a Halifax County Board of Alcoholic Control and provided that the voters of Halifax County could elect which structure would be implemented; and

Whereas, in an election in 1960, the electors of Halifax County approved the "Crew Proposal" in Chapter 1257 of the 1959 Session Laws; and

Whereas, at the regular meeting of the Halifax County Board of Commissioners on December 5, 1994, a motion was adopted providing the Board of County Commissioners make appointments, set compensations, etc.; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-700(a) reads as rewritten:

"(a) Membership. -- ~~A local ABC board shall consist of three members appointed for three-year terms, unless a different membership or term is provided by a local act enacted before the effective date of this Chapter, or unless the board is a board for a merged ABC system under G.S. 18B-703 and a different size membership has been provided for as part of the negotiated merger. One member of the initial board of a newly created ABC system shall be appointed for a three-year term, one member for a two-year term, and one member for a one-year term.~~ The Halifax County Board of Alcoholic Control shall consist of three members appointed for three-year terms. The three members appointed prior to the effective date of this act shall complete their terms as appointed. As the terms of ~~initial~~ board members expire, their successors shall each be appointed for three-year terms. The appointing authority shall designate one member of the local board as chairman."

Sec. 2. Section 4 of Chapter 1257 of the 1959 Session Laws, as amended by Chapter 448 of the 1977 Session Laws, reads as rewritten:

"Sec. 4. If a majority of the voters in said special election favor the Crew Proposal, then the following provisions of this Section shall be adopted for Halifax County and become effective following approval by the voters:

(a) Chapter 433 of the Session Laws of 1943, Chapter 558 of the Session Laws of 1945, Chapter 33 of the Session Laws of 1947, Chapter 148 of the Session Laws of 1947, Chapter 824 of the Session Laws of 1947, Chapter 1114 of the Session Laws of 1949, Chapter 721 of the Session Laws of 1951, Chapter 1033 of the Session Laws of 1951 and all other laws and clauses of laws relating to the Halifax County Board of Alcoholic Control in conflict with Article III, of Chapter 18 of the General Statutes of North Carolina are hereby repealed.

(b) The present Alcoholic Beverage Control Board of Halifax County, and their agent or agents, shall turn over to the new Board of Alcoholic Control created by G.S. 18-41, on or before July 1, 1960, all monies, bank credits, stocks of merchandise, equipment, equity in contracts, books of record, bills receivable, accounts payable and all other property and effects of any kind or nature used in or incident to the operation of the Alcoholic Beverage Control Board of Halifax County. On June 29 and June 30, 1960, all alcoholic beverage control stores in Halifax County shall be closed and an inventory of all stocks, property and other effects belonging to the Alcoholic Beverage Control Board of Halifax County shall be taken jointly by the outgoing and incoming Boards, or their agents. Such inventory shall be in writing and shall include the quantity and cost price of the stocks of merchandise and the number of articles and value of other property. The inventory herein provided for shall be available to the auditor who shall make a complete audit of the affairs of said Alcoholic Beverage Control System as on June 30, 1960. ~~The profits heretofore accrued or hereafter accrued shall be distributed as follows:~~

~~After necessary deductions are made to provide for a proper reserve and to provide for operating expenses, all profits which accrue from the operation of the alcoholic beverage control stores in Halifax County, commencing July 1, 1960, and quarterly thereafter, shall be distributed in the following manner:~~

~~(1) Not less than five per cent (5%) nor more than ten per cent (10%) of the total profits shall be allocated to law enforcement and expended by the Halifax County Board of Alcoholic Control in the manner and for the purposes set out in G.S. 18-45, as it appears in the 1957 Cumulative Supplement to Volume 1C of the General Statutes.~~

~~(2) Not more than five per cent (5%) of the total profits may be allocated for education as to the use of alcoholic beverages and for the rehabilitation of alcoholics by the Halifax County Board of Alcoholic Control in the manner and for the purposes set out in G.S. 18-45, as it appears in the 1957 Cumulative Supplement to Volume 1C of the General Statutes.~~

~~(4) After subsections (1) and (2) of this Section have been complied with:~~

~~(a) Twenty-five per cent (25%) of the remaining profits shall be allocated and paid to the several municipal corporations within Halifax County where alcoholic beverage control stores are operated; such profits shall be allocated proportionately on the basis of the ratio of profits derived from the operation of the store or stores in any one municipality to the profits derived from the operation of all stores in all of the municipalities in the county in which stores are operated; and~~

~~(b) Seventy-five percent (75%) of the profits shall be paid to the Board of Commissioners of Halifax County; forty percent (40%) shall be used by the county commissioners for general county purposes; sixty per cent (60%) of said seventy-five per cent (75%) shall be allocated by the county board of commissioners and distributed to the Halifax County Board of Education, the Weldon City Administrative Unit and the Roanoke Rapids City Administrative Unit proportionately on a per capita school enrollment basis and expended by the governing boards of the several school units for necessary expenses in their respective units.~~

~~(c) The books and records of the Halifax County Board of Alcoholic Control shall be audited quarterly by the auditor or auditing firm employed to do the regular county auditing and said quarterly audits shall be made available to the Board of County Commissioners of Halifax County and to the public for inspection and review.~~

(c1) Commencing July 1, 1995, the distribution of revenue and fiscal operations of the Halifax County Board of Alcoholic Control shall be conducted pursuant to the general law.

(d) The Halifax County Board of Commissioners, the Halifax County Board of Health and the Halifax County Board of Education shall hold a joint meeting within fourteen (14) days after adoption of this proposal, and at such meeting they shall elect the three members of the new Halifax County Board of Alcoholic Control in the manner provided in G.S. 18-41 and shall arrange for the audit directed by this Section."

Sec. 3. This act applies to Halifax County only.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of April, 1995.

S.B. 120 **CHAPTER 46**

AN ACT TO PROVIDE UNIFORM TAX TREATMENT OF NORTH CAROLINA OBLIGATIONS AND FEDERAL OBLIGATIONS.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 53A of the General Statutes is repealed.

Sec. 2. G.S. 63A-9(l) reads as rewritten:

"(l) Bonds and notes ~~and their transfer, including any profit made on their sale,~~ are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift ~~taxes,~~ taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes is not subject to taxation as ~~income, and the bonds and notes are not subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation.~~ income."

Sec. 3. G.S. 105-134.6 reads as rewritten:

"*§ 105-134.6. Adjustments to taxable income.*

(a) S Corporations. -- The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be subject to the adjustments provided in subsections (b), (c), and (d) of this section.

(b) Deductions. -- The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

(1) Interest upon the obligations of ~~(i) the United States or its possessions, (ii) this State or a political subdivision of this State, or (iii) a nonprofit educational institution organized or chartered under the laws of this State,~~ any of the following:
   a. The United States or its possessions.
   b. This State, a political subdivision of this State, or a commission, an authority, or another agency of this State or of a political subdivision of this State.
   c. A nonprofit educational institution organized or chartered under the laws of this State.

(2) ~~Interest upon obligations and gain~~ Gain from the disposition of obligations issued before July 1, 1995, to the extent the ~~interest or~~ gain is exempt from tax under the laws of this State.

(3) Benefits received under Title II of the Social Security Act and amounts received from retirement annuities or pensions paid under the provisions of the Railroad Retirement Act of 1937.

(4) Repealed by Session Laws 1989 (Reg. Sess., 1990), c. 1002, s. 2.

(5) Refunds of state, local, and foreign income taxes included in the taxpayer's gross income.

(6) a. An amount, not to exceed four thousand dollars ($4,000), equal to the sum of the amount calculated in subparagraph b. plus the amount calculated in subparagraph c.
   b. The amount calculated in this subparagraph is the amount received during the taxable year from one or more state, local, or federal government retirement plans.
   c. The amount calculated in this subparagraph is the amount received during the taxable year from one or more retirement plans other than state, local, or federal government retirement plans, not to exceed a total of two thousand dollars ($2,000) in any taxable year.
   d. In the case of a married couple filing a joint return where both spouses received retirement benefits during the taxable year, the maximum dollar amounts provided in this subdivision for various types of retirement benefits apply separately to each spouse's benefits.

(7) Recodified as G.S. 105-134.6(d)(1).

(8) Recodified as G.S. 105-134.6(d)(2).

(9) Income that is (i) earned or received by an enrolled member of a federally recognized Indian tribe and (ii) derived from activities

on a federally recognized Indian reservation while the member resides on the reservation. Income from intangibles having a situs on the reservation and retirement income associated with activities on the reservation are considered income derived from activities on the reservation.

(10) The amount by which the basis of property under this Article exceeds the basis of the property under the Code, in the year the taxpayer disposes of the property.

(c) Additions. -- The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

(1) Interest upon the obligations of ~~states, other than this State, and their political subdivisions,~~ states other than this State, political subdivisions of those states, and agencies of those states and their political subdivisions.

(2) Any amount allowed as a deduction from gross income under the Code that is taxed under the Code by a separate tax other than the tax imposed in section 1 of the Code.

(3) Any amount deducted from gross income under section 164 of the Code as state, local, or foreign income tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount by which the taxpayer's allowable standard deduction has been increased under section 63(c)(4) of the Code.

(4) The amount by which the taxpayer's standard deduction has been increased for inflation under section 63(c)(4) of the Code and the amount by which the taxpayer's personal exemptions have been increased for inflation under section 151(d)(4)(A) of the Code. For the purpose of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage.

(5) The fair market value, up to a maximum of one hundred thousand dollars ($100,000), of the donated property interest for which the taxpayer claims a credit for the taxable year under G.S. 105-151.12 and the market price of the gleaned crop for which the taxpayer claims a credit for the taxable year under G.S. 105-151.14.

(6) The amount by which the basis of property under the Code exceeds the basis of the property under this Article, in the year the taxpayer disposes of the property.

(d) Other Adjustments. -- The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

(1) The amount of inheritance tax attributable to an item of income in respect of a decedent required to be included in gross income under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7, may be deducted in the year the item of

income is included. The amount of inheritance tax attributable to an item of income in respect of a decedent is (i) the amount by which the inheritance tax paid under Article 1 of this Chapter on property transferred to a beneficiary by a decedent exceeds the amount of inheritance tax that would have been payable by the beneficiary if the item of income in respect of a decedent had not been included in the property transferred to the beneficiary by the decedent, (ii) multiplied by a fraction, the numerator of which is the amount required to be included in gross income for the taxable year under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7, and the denominator of which is the total amount of income in respect of a decedent transferred to the beneficiary by the decedent. For an estate or trust, the deduction allowed by this subdivision shall be computed by excluding from the gross income of the estate or trust the portion, if any, of the items of income in respect of a decedent that are properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

The Secretary ~~of Revenue~~ may provide to a beneficiary of an item of income in respect of a decedent any information contained on an inheritance tax return that the beneficiary needs to compute the deduction allowed by this subdivision.

(2) The taxpayer may deduct the amount by which the taxpayer's deductions allowed under the Code were reduced, and the amount of the taxpayer's deductions that were not allowed, because the taxpayer elected a federal tax credit in lieu of a deduction. This deduction is allowed only to the extent that a similar credit is not allowed by this Division for the amount."

Sec. 4. G.S. 115C-513(b) reads as rewritten:

"(b) Issuance of Bonds. -- The board of education of a merged school administrative unit may issue notes, bonds, or refunding bonds at one time or from time to time to pay the capital costs of school facilities as described in G.S. 159-48. The bonds shall be issued and maintained in accordance with the provisions of Articles 1, 4, 5A, 7, 9, 10, and 11 of Chapter 159 of the General Statutes, except as modified by this section.

The board of education of a merged school administrative unit shall call for a referendum authorizing the issuance of notes, bonds, and refunding bonds and the levy of a tax to pay amounts relating to these notes, bonds, or refunding bonds. The referendum may be called only with the consent of the boards of commissioners of both counties in which the merged school administrative unit is located. The referendum shall be held in the merged school administrative unit and only those qualified voters who reside in the unit may vote. The board of commissioners of each county shall have the referendum conducted by the board of elections of its county.

After issuance of the approved bonds, the merged school administrative unit shall make timely payments of principal and interest on the bonds after receipt of notification of its debt service obligation pursuant to G.S. 159-35. The provisions of G.S. 159-36 govern a failure by the merged school

administrative unit to levy taxes or otherwise provide for payment of the debt.

Bonds, notes, and refunding bonds issued under this section ~~and their transfer (including any profit made on the sale thereof)~~ shall be exempt from all State, county, and municipal taxation and assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift ~~taxes.~~ taxes, income taxes on the gain from the transfer of bonds, notes, and refunding bonds, and franchise taxes. The interest on bonds, notes, and refunding bonds is not subject to taxation as ~~to~~ income. ~~The bonds, notes, and refunding bonds are not subject to taxation when they constitute a part of the surplus of a bank, trust company, or other corporation.~~

Article 9 of the North Carolina Uniform Commercial Code, Chapter 25 of the General Statutes, does not apply to any security interest created in connection with the issuance of bonds under this section."

Sec. 5. G.S. 115E-21 reads as rewritten:

"*§ 115E-21. Tax exemption.*

The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State and will promote their health and welfare, and no tax or assessment shall be levied upon any project undertaken by the agency prior to the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the agency in connection with such project.

Any bonds or notes issued by the agency under the provisions of this ~~Chapter, their transfer and the income therefrom (including any profit made on the sale thereof)~~ Chapter shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift ~~taxes.~~ taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income."

Sec. 6. G.S. 116-183 reads as rewritten:

"*§ 116-183. Acceptance of grants; exemption from taxation.*

The Board is hereby authorized, subject to the approval of the Director of the Budget, to accept grants of money or materials or property of any kind for any project from a federal agency, private agency, corporation or individual, upon such terms and conditions as such federal agency, private agency, corporation or individual may impose. The bonds issued under ~~the provisions of~~ this Article ~~and the income therefrom shall at all times be free from taxation within the State.~~ are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income."

Sec. 7. G.S. 116-196 reads as rewritten:

"*§ 116-196. Exemption from taxation; bonds eligible for investment or deposit.*

Any bonds issued under this ~~Article, including any of such bonds constituting a part of the surplus of any bank, trust company or other corporation, and the transfer of and the income from any such bonds~~

~~(including any profit made on the sale thereof and all principal, interest and redemption premiums, if any)~~ Article shall at all times be exempt from all taxes or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, which are levied or assessed by the State or by any county, political subdivision, agency or other instrumentality of the ~~State.~~ State, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes. The interest on the bonds is not subject to taxation as income. Bonds issued by the Board under the provisions of this Article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law."

Sec. 8. G.S. 116-198.39 reads as rewritten:

"*§ 116-198.39. Bonds are exempt from taxation.*

Any bonds issued under this ~~Article, including any of such bonds constituting a part of the surplus of any bank, trust company, or other corporation, and the transfer of and the income from any such bonds (including any profit made on the sale thereof and all principal, interest, and redemption premiums, if any)~~ Article shall at all times be exempt from all taxes or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, which are levied or assessed by the State or by any county, political subdivision, agency, or other instrumentality of the ~~State.~~ State, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes. The interest on the bonds is not subject to taxation as income. Bonds issued by the Board under the provisions of this Article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law."

Sec. 9. G.S. 116-209.13 reads as rewritten:

"*§ 116-209.13. Tax exemption.*

The exercise of the powers granted by this Article in all respects will be for the benefit of the people of the State, for their well-being and prosperity and for the improvement of their social and economic conditions, and the Authority shall not be required to pay any taxes on any property owned by the Authority under the provisions of this Article or upon the income therefrom, and the bonds issued under the provisions of this ~~Article, their~~

~~transfer and the income therefrom (including any profit made on the sale thereof).~~ Article shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift ~~taxes.~~ taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes. The interest on the bonds is not subject to taxation as income."

Sec. 10. G.S. 122A-19 reads as rewritten:

"*§ 122A-19. Tax exemption.*

The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State, for their well-being and prosperity and for the improvement of their social and economic conditions, and the Agency shall not be required to pay any tax or assessment on any property owned by the Agency under the provisions of this Chapter or upon the income therefrom.

Any obligations issued by the Agency under the provisions of this ~~Chapter, their transfer and the income therefrom (including any profit made on the sale thereof),~~ Chapter shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift ~~taxes.~~ taxes, income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the obligations is not subject to taxation as income."

Sec. 11. G.S. 122D-14 reads as rewritten:

"*§ 122D-14. Exemption from taxes.*

The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State, for their well-being and prosperity and for the improvement of their social and economic conditions, and the Authority shall not be required to pay any tax or assessment on any property owned by the Authority under the provisions of this Chapter or upon the income therefrom.

Any obligations issued by the Authority under the provisions of this ~~Chapter, their transfer and the income therefrom (including any profit made on the sale thereof),~~ Chapter shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift ~~taxes.~~ taxes, income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the obligations is not subject to taxation as income."

Sec. 12. G.S. 131A-21 reads as rewritten:

"*§ 131A-21. Tax exemption.*

The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State and will promote their health and welfare, and no tax or assessment shall be levied upon any health care facilities undertaken by the Commission prior to the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the Commission in connection with such health care facilities.

Any bonds or notes issued by the Commission under the provisions of this ~~Chapter, their transfer and the income therefrom (including any profit made on the sale thereof)~~ Chapter shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift ~~taxes.~~ taxes, income taxes on the gain

from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income."

Sec. 13. G.S. 131E-28(c) reads as rewritten:

"(c) Bonds, notes, debentures, or other evidences of indebtedness of a hospital authority issued under the Local Government Revenue Bond Act, Chapter 159 of the General Statutes, Article 5, or issued pursuant to the bond and revenue anticipation provisions of Chapter 159 of the General Statutes, Article 9, or issued pursuant to G.S. 131E-26(b) or contracted pursuant to G.S. 131E-32 ~~and the transfer of and income from such instruments, including profits on sales,~~ shall at all times be free from taxation by the State or any of its subdivisions, except for inheritance or gift ~~taxes.~~ taxes, income taxes on the gain from the transfer of the instruments, and franchise taxes. The interest on the instruments is not subject to taxation as income."

Sec. 14. G.S. 142-12 reads as rewritten:

"*§ 142-12. State bonds exempt from taxation.*

~~The original bonds or certificates of debt of the State, which have been issued since the first day of January, 1853, or which may hereafter be issued under the authority of any act whatever, as likewise the bonds and certificates substituted for such original bonds and certificates, shall be, they and the interest accruing thereon, exempt from taxation.~~ Bonds and other evidences of indebtedness issued by the State are exempt from State taxation to the extent provided in the act authorizing their issuance. If the act authorizing the issuance of the instruments does not address exemption from taxation, then they are exempt from taxation by the State or any of its subdivisions, except for inheritance or gift taxes, income taxes on the gain from the transfer of the instruments, and franchise taxes. Unless the act authorizing the issuance of the instruments provides otherwise, the interest on the instruments is not subject to taxation as income."

Sec. 15. G.S. 142-29.6(f) reads as rewritten:

"(f) All refunding ~~obligations, coupons (if any) and any evidences of additional interest appertaining thereto, and their transfer (including any profit made on the sale thereof),~~ obligations shall be exempt from all State, county and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, ~~including~~ except for inheritance and gift taxes, income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the refunding obligations is not subject to taxation as income. ~~and the interest on the refunding obligations shall not be subject to taxation as to income, nor shall the refunding obligations or coupons (if any) or evidences of additional indebtedness be subject to taxation when constituting a part of the surplus of any bank, trust company or other corporation.~~"

Sec. 16. G.S. 143B-456(g) reads as rewritten:

"(g) Any obligations issued by the Authority under the provisions of this ~~Part, their transfer and the income therefrom (including any profit made on the sale thereof),~~ Part shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift ~~taxes,~~ taxes, income taxes on the gain from the

transfer of the obligations, and franchise taxes. The interest on the obligations is not subject to taxation as income."

Sec. 17. G.S. 157-26 reads as rewritten:

"§ *157-26. Tax exemptions.*

An authority is a local government agency and is exempt from taxation to the same extent as a unit of local government. Property owned by an authority is exempt from taxation in accordance with Article V, § Sec. 2 of the North Carolina Constitution. Bonds and other obligations issued by an authority or its corporate agent authorized by this Article to exercise its powers ~~The authority shall be exempt from the payment of any taxes or fees to the State or any subdivision thereof, or to any officer or employee of the State or any subdivision thereof. The property of an authority used for public purposes shall be exempt from all local and municipal taxes and for the purposes of such tax exemption, it is hereby declared as a matter of legislative determination that an authority is and shall be deemed to be a municipal corporation. Bonds, notes, debentures and other evidences of indebtedness of an authority (including any corporate agent thereof authorized by this Article to exercise the powers of the authority) heretofore or hereafter issued~~ are declared to be issued for a public purpose and to be public ~~instrumentalities and, together with the interest thereon, shall be exempt from taxes.~~ instrumentalities. These obligations are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the obligations is not subject to taxation as income."

Sec. 18. G.S. 159B-26 reads as rewritten:

"§ *159B-26. Tax exemption.*

~~Bonds, their transfer and the income therefrom (including any profit made on the sale thereof),~~ Bonds shall at all times be free from taxation by the State or any political subdivision or any ~~agency of either thereof,~~ of their agencies, excepting inheritance or gift ~~taxes.~~ taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes. The interest on the bonds is not subject to taxation as income."

Sec. 19. G.S. 159I-23 reads as rewritten:

"§ *159I-23. Tax exemption.*

All of the bonds and notes authorized by this ~~Chapter and the coupons, if any, appertaining thereto, and their transfer (including any profit made on the sale thereof),~~ Chapter shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift ~~taxes.~~ taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes shall not be subject to taxation as ~~to income, nor shall the bonds, notes, and coupons, if any, be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation.~~ income."

Sec. 20. G.S. 160A-516(b) reads as rewritten:

"(b) Neither the commissioners of a commission nor any person executing the bonds shall be liable personally on the bonds by reason of the

issuance ~~thereof.~~ of the bonds. The bonds and other obligations of the commission (and ~~such~~ the bonds and obligations shall so state on their face) shall not be a debt of the municipality, the county, or the State and neither the municipality, the county, nor the State shall be liable ~~thereon,~~ on the bonds, nor in any event shall ~~such~~ the bonds or obligations be payable out of any funds or properties other than those of ~~said~~ the commission acquired for the purpose of this Article. The bonds shall not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of a commission are declared to be issued for an essential public and governmental purpose and to be public ~~instrumentalities and, together with interest thereon and income therefrom, shall be exempt from all taxes.~~ instrumentalities. The bonds are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds is not subject to taxation as income. Bonds may be issued by a commission under this Article notwithstanding any debt or other limitation prescribed in any statute. This Article without reference to other statutes of the State shall constitute full and complete authority for the authorization and issuance of bonds by the commission ~~hereunder~~ under this Article and ~~such~~ this authorization and issuance shall not be subject to any conditions, ~~restrictions~~ restrictions, or limitations imposed by any other statute whether general, ~~special~~ special, or local, except as provided in subsection (d) of this section."

Sec. 21. This act becomes effective July 1, 1995, and applies to obligations issued on or after that date.

In the General Assembly read three times and ratified this the 20th day of April, 1995.

S.B. 146 **CHAPTER 47**

AN ACT TO AMEND THE NORTH CAROLINA SEED LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-277.5 reads as rewritten:

"*§ 106-277.5. Labels for agricultural seeds.*

Agricultural seeds sold, offered or exposed for sale, transported for sale, or otherwise distributed within this State shall be labeled to show the following information:

(1) The commonly accepted name of the kind and the variety, or kind and the phrase 'variety not stated' for each agricultural seed component, in excess of five percent (5%) of the whole, and the percentage by weight of each in order of its predominance. The Board of Agriculture may, pursuant to G.S. 106-277.15, require the variety to be stated on the labeling for certain kinds of agricultural seed, and the phrase 'variety not stated' shall not be used on the labeling of such seed. When more than one component is required to be named, the word 'mixture' or the

word 'mixed' shall be shown conspicuously on the label. Second generation from hybrid seeds, if sold, shall be labeled 'second generation (of the parent), variety not stated.' 'F' designations on labels, unless used as a part of a variety name, will refer only to size and shape of corn seeds.

(2) Lot number or other lot identification.

(3) Net weight.

(4) Origin, if known. If the origin is unknown, the fact shall be stated.

(5) Percentage by weight of inert matter.

(6) Percentage by weight of agricultural seeds and/or vegetable seeds (which shall be designated as 'other crop seeds') other than those named on the label. Different varieties of the same kind of seed, when in quantities of less than five percent (5%) will be considered as other crop seed.

(7) Percentage by weight of all weed seeds, including noxious-weed seeds.

(8) For each named agricultural seed:

a. Percentage of germination, exclusive of hard seed.

b. Percentage of hard seeds, if present.

c. The calendar month and year the test was completed to determine such percentages.

In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.

(9) The name and number per pound of each kind of restricted noxious-weed seed present.

(10) Name and address of person who labeled said seed or who sells, offers or exposes said seed for sale within this State. If the seeds are labeled by the shipper for a consignee within this State, the shipper may use his approved code designation with the name and address of the consignee.

(11) Such other information as the Board shall prescribe by rule."

Sec. 2. G.S. 106-277.6 is amended by adding the following new subdivision:

"(6) Such other information as the Board shall prescribe by rule."

Sec. 3. G.S. 106-277.7 is amended by adding the following new subdivision:

"(8) Such other information as the Board shall prescribe by rule."

Sec. 4. G.S. 106-277.15 reads as rewritten:

"*§ 106-277.15. Rules, regulations and standards.*

The ~~Commissioner of Agriculture, jointly with the~~ Board of Agriculture, in accordance with the Administrative Procedure Act, ~~after public hearing immediately following 10 days' public notice~~ may adopt such rules, regulations and standards which they may find to be advisable or necessary to carry out and enforce the purposes and provisions of this Article, which shall have the force and effect of law. The ~~Commissioner and~~ Board of Agriculture shall adopt rules, regulations and standards as follows:

(1) Prescribing the methods of sampling, inspecting, analyzing, testing and examining agricultural and vegetable seed, and determining the tolerance to be followed in the administration of this Article.
(2) Declaring a list of prohibited and restricted noxious weeds, conforming with the definitions stated in this Article, and to add to or subtract therefrom, from time to time, after a public hearing following due public notice.
(3) Declaring the maximum percentage of total weed seed content permitted in agricultural seed.
(4) Declaring the maximum number of 'restricted' noxious-weed seeds per pound of agricultural seed permitted to be sold, offered or exposed for sale.
(5) Declaring the minimum percentage of germination permitted for sale as 'Agricultural Seeds.'
(6) Declaring germination standards for vegetable seeds.
(7) Prescribing the form and use of tags or stamps to be used in labeling seed.
(8) Prescribing such other rules and regulations as may be necessary to secure the efficient enforcement of this Article.
(9) Establishing fees and charges for agricultural and vegetable seed testing and analysis.
(10) Prescribing minimum hybrid percentage for labeling for each species hybridized.
(11) Prescribing labeling and coloring requirements for treated seed.
(12) Establishing a Tobacco Seed Committee which shall approve flue-cured tobacco varieties prior to registration with the Department.
(13) Prescribing labeling requirements for agricultural and vegetable seed."

Sec. 5. G.S. 106-277.28 reads as rewritten:

"*§ 106-277.28. License and inspection fees.*

For the purpose of providing a fund to defray the expense of inspection, examination, and analysis of seeds and the enforcement of this Article:

(1) Repealed by Session Laws 1991, c. 588, s. 1.
(2) Each seed dealer who offers for sale any agricultural, vegetable, or lawn or turf seeds for seeding purposes shall register with the Commissioner and shall obtain an annual license, for each location where activities are conducted, by January 1 of each year and shall pay the following license fee:
    a. Wholesale or combined wholesale and retail seed dealer $100.00
    b. Retail seed dealer with sales of no more than $500.00 ..... 5.00
    c. Retail seed dealer with sales of more than $500.00 but no more than $1,000 ..... 15.00
    d. Retail seed dealer with sales of more than $1,000 ..... 25.00.
(3) Each seed dealer or grower who has seed, whether originated or labeled by the dealer or grower, that is offered for sale in this

State shall report the quantity of seed ~~sold~~ offered for sale and pay an inspection fee of two cents (2¢) for each container of seeds weighing 10 pounds or more. Seed shall be subject to the inspection fee and reporting requirements only once in any 12-month period. This fee does not apply to seed grown by a farmer and offered for sale by the farmer at the farm where the seed was grown.

Each seed dealer or grower shall keep accurate records of the quantity of seeds and container weights ~~sold~~ offered for sale from each distribution point in the State. These records shall be available to the Commissioner or an authorized representative of the Commissioner at any and all reasonable hours for the purpose of verifying the quantity of seed ~~sold~~ offered for sale and the fees paid. Each seed dealer or grower shall report quarterly on forms furnished by the Commissioner the quantity and container weight of seeds ~~sold~~ first offered for sale that quarter. The reports shall be made on the first day of January, April, July, and October, or within 10 days ~~thereafter, and the inspection fee shall be due and payable with the report.~~ thereafter. Inspection fees shall be due and paid with the next quarterly report filed after the seed is first offered for sale. If the report is not filed and the inspection ~~fee~~ fees paid to the Department of Agriculture by the tenth day following the date due, or if the report of the quantity or container weights is false, the Commissioner may issue a stop-sale order for all seed offered for sale by the dealer or grower. If the inspection ~~fee is~~ fees are unpaid more than 15 days after the due date, the amount due shall bear a penalty of ten percent (10%) which shall be added to the inspection ~~fee~~ fees due."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of April, 1995.

H.B. 206 **CHAPTER 48**

AN ACT TO INCORPORATE THE VILLAGE OF FLAT ROCK, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. A charter for the Village of Flat Rock is enacted to read:

"CHARTER OF THE VILLAGE OF FLAT ROCK.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. *Incorporation and Corporate Powers.* The inhabitants of the Village of Flat Rock are a body corporate and politic under the name 'Village of Flat Rock'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. *Village Boundaries.* Until modified in accordance with law, the boundaries of the Village of Flat Rock are as follows:

BEGINNING near Pleasant Hill Church at the point of intersection of the projection in a Northwest direction of a line located 30 feet South of and parallel to the centerline of Little River Road (SR#1123) and a line located 30 feet West of and parallel to the centerline of Kanuga Road (SR # 1127) thence with a line located 30 feet West of and parallel to the centerline of Kanuga Road in a Northeast direction to the intersection of said line with the projection in a Northwest direction of the Southwest boundary of the Kenneth L. Eicholtz property as described in deed recorded in Deed Book 756, Page 372, Henderson County Registry; thence, crossing Kanuga Road in a Southeast direction to the Northwest corner of Eicholtz's property; thence with the Southwest boundary of Kenneth L. Eicholtz property in a Southeast direction to Eicholtz's Southwest corner; thence, with the Eicholtz Southeast boundary in a Northeast direction to the Southwest corner of the Kenneth L. Eicholtz property as described in deed recorded in Deed Book 754, Page 511, Henderson County Registry; thence with the Southeast boundary of the Eicholtz property in a Northeast direction to the Northwest corner of Lot #22, Section Two, Beaumont Estates as described in deed recorded in Plat Book A, Page 152-A, Henderson County Registry; thence with the Northwest boundary of Beaumont Estates in a Northeast direction crossing Beaumont Drive to the intersection of the projection of Beaumont Estates boundary with the Southwest boundary of English Hills Subdivision as described in deed recorded in Plat Book C, Page 262-A, Henderson County Registry; thence, with the projection of the Southwest boundary of English Hills Subdivision in a Southeast direction to the intersection of the centerline of Mud Creek; thence, downstream in a Northeast direction with the centerline of Mud Creek crossing Erkwood Drive (SR#1164) to the intersection of said centerline with a line located 30 feet North of and parallel with the centerline of Erkwood Drive; thence, with a line located 30 feet North of and parallel to the centerline of Erkwood Drive in a Southeast direction to the intersection of said line with the projection in a Northwest direction of a line located 30 feet North of and parallel to the centerline of Mud Creek Cemetery Road (SR #1165); thence, crossing Erkwood Drive to the intersection of a line located 30 feet South of and parallel to the centerline of Erkwood Drive and a line located 30 feet North of and parallel to the centerline of Mud Creek Cemetery Road; thence with a line located 30 feet North of and parallel to the centerline of Mud Creek Cemetery Road in a Southeast direction to the intersection of a line located 30 feet West of and parallel to the centerline of Rutledge Drive (SR #1166); thence crossing Rutledge Drive to the intersection of the projection in a Southeast direction of a line located 30 feet North of and parallel to the centerline of Mud Creek Cemetery Road and a line located 30 feet East of and parallel to the centerline of Rutledge Drive; thence with a line located 30 feet East of and parallel to the centerline of Rutledge Drive in a Southeast direction to the intersection of the West boundary line of Southern Bell Telephone and Telegraph Company property as described in deed recorded in Deed Book 637, Page 348, Henderson County Registry; thence with the West boundary of said property in a North direction to the Northwest corner of the

Southern Bell Telephone and Telegraph Company property; thence, with the North boundary of Southern Bell Telephone and Telegraph Company property in a East direction to the Northeast corner of said property; thence with the East boundary of Southern Bell Telephone and Telegraph Company property in a South direction to the Northwest corner of the Vestry and Wardens of the Church of St. John in the Wilderness property as described in deed recorded in Deed Book 670, Page 641, Henderson County Registry; thence with the North boundary of said property in an East direction to the intersection of a line located 30 feet West of and parallel to the centerline of US 25; thence with a line located 30 feet West of and parallel to the centerline of US 25 in a North direction to the intersection of the projection in a West direction of a line located 30 feet North of and parallel to the centerline of Highland Lake Road (SR #1783); thence crossing US 25 in an East direction to the intersection of a line located 30 feet East of and parallel to the centerline of US 25 and a line located North of and parallel to the centerline of Highland Lake Road; thence, with a line located 30 feet North and parallel to the centerline of Highland Lake Road in an East direction to the intersection of the projection in a Northwest direction of a line located 30 feet East of and parallel to the centerline of Highland Lake Drive (SR #1825); thence crossing Highland Lake Road in a Southeast direction to the intersection of a line located 30 feet South of and parallel to the centerline of Highland Lake Road and a line located 30 feet East of and parallel to the centerline of Highland Lake Drive; thence with a line located 30 feet North and East of and parallel to the centerline of Highland Lake Drive in a Southeast direction to the intersection of a line located 30 feet North of and parallel to the centerline of Blue Ridge Road (SR #1812); thence with a line located 30 feet Northeast of and parallel to the centerline of Blue Ridge Road in a Southeast direction to the projection in a North direction of the seventh course in the description of the property owned by Henderson County Board of Public Education as described in deed recorded in Deed Book 408, Page 481, Henderson County Registry; thence crossing Blue Ridge Road to the North terminus of the seventh course in the description of the boundary of Henderson County Board of Public Education property; thence with the Henderson County Board of Public Education property boundaries in a Southwest, South and East directions to the Eastern terminus of the second course described in the Henderson County Board of Public Education deed; thence in an East direction crossing a private drive to the Southwest corner of Edward C. Jones property as described in deed recorded in Deed Book 769, Page 279, Henderson County Registry; thence in a East direction with the South boundary of Edward C. Jones property to the Southwest corner of the Hannah L. Edwards property as described in deed recorded in Deed Book 555, Page 809, Henderson County Registry; thence in a East direction with Hannah L. Edwards' South boundary to the Southeast corner of the Hannah L. Edwards property; thence, crossing Mine Gap Road in a Due East direction to the intersection of a line located 30 feet East of and parallel to the centerline of Mine Gap Road (SR #1827); thence, with a line located 30 feet East of and parallel to the centerline of Mine Gap Road in a South and Southeast direction to the intersection of said line and the projection in an East direction of the South boundary line of W. Stephen

Gilboy property as described in deed recorded in Deed Book 682, Page 355, Henderson County Registry; thence, crossing Mine Gap Road in a South direction to the Southeast corner of W. Stephen Gilboy's property; thence with the South boundary of W. Stephen Gilboy property in a West direction to the Southeast corner of Lot Number 51K, Section Five, King Crest Subdivision as shown on plat thereof recorded in the Henderson County Registry in Slide A, Page 263-A; thence with the South boundary of Lot Number 51K in a West direction to the Southwest corner of Lot Number 51K and the South margin of the right of way of King Crest Drive; thence with the South margin of the right of way of King Crest Drive in a Southwest direction to the Northwest corner of Lot Number 33, Kingwood Subdivision, Addition Number Four, as described in deed recorded in Plat Book A, Page 263, Henderson County Registry; thence with the North boundary of Kingwood Subdivision, Addition Number Four, in an East direction to Northwest corner of Lot Number 31, Addition Number Three, of Kingwood Subdivision as described in deed recorded in Plat Book A, Page 252A, Henderson County Registry; thence, with the North boundary of Addition Number Three in an East direction to the Northwest corner of Lot No. 23, Kingwood Subdivision, Addition Number One, as described in deed recorded in Plat Book A, Page 288, Henderson County Registry; thence, with the North boundary of Addition Number One in an East direction to the Northeast corner of Lot Number 23, Kingwood Subdivision, Addition Number One Revision; thence with the East boundary of Kingwood Subdivision, Addition Number One Revision, in a Southwest direction to the Northeast corner of Lot Number 17, Kingwood Subdivision as described in deed recorded in Deed Book 675, Page 350, Henderson County Registry; thence with the East boundary of Kingwood Subdivision in a Southwest direction to the Southeast corner of Kingwood Subdivision, Lot Number Twenty Five as described in deed recorded in Deed Book 728, Page 09, Henderson County Register; thence with the South boundary of Lot Number Twenty Five in a West direction to the Southwest corner of Lot Number Twenty Five, Kingwood Subdivision; thence crossing US 25 in a South direction to the intersection of a line running due South from the Southwest corner of Kingwood Subdivision, Lot Number Twenty Five, and a line located 30 feet south of and parallel to the centerline of US 25; thence with a line located 30 feet South of and parallel to the centerline of US 25 in a West direction to the intersection of the Southeast boundary of Alexander Schenck property as described in deed recorded in Deed Book 617, Page 705, Henderson County Registry; thence with the Southeast boundary of Alexander Schenck in a Southwest direction to the Southwest corner of Alexander Schenck property, said point also being a corner of that property owned by Kenmure Properties, Ltd. as described in deed recorded in Deed Book 644, Page 341, Henderson County Registry; thence with the Kenmure Properties, Ltd. property in a Southwest direction to the intersection of Kenmure Properties, Ltd. boundary with a line located 30 feet South of and parallel to the centerline of Pinnacle Mountain Road (SR 1114); thence with a line located 30 feet South of and parallel to the centerline of the Pinnacle Mountain Road in a West direction to the projection in a South direction of the West boundary of Kenmure Properties, Ltd.; thence crossing Pinnacle

Mountain Road in a North direction to the intersection of the West boundary of Kenmure Properties, Ltd. and a line located 30 feet North of and parallel to the centerline of Pinnacle Mountain Road; thence with the West boundary line of Kenmure in a North direction to the intersection of the South boundary of the T. D. Hunter, III property as described in deed recorded in Deed Book 463, Page 292, Henderson County Registry; thence with the T. D. Hunter, III property in a West and North direction to the Northeast corner of Lot Six, Ann Wilson Barnette Property as described in deed recorded in Plat Book A, Page 29A, Henderson County Registry; thence with Ann Wilson Barnette property in a West direction to the Southwest corner of Lot Eleven, Stonebridge Subdivision as described in deed recorded in Plat Book A, Page 398A, Henderson County Registry; thence with the West and North boundaries of Stonebridge Subdivision in a North direction to the Northwest corner of Lot Seven, Stonebridge Subdivision, also being the Southeast corner of Paul R. Fitzner property as described in deed recorded in Deed Book 558, Page 880, Henderson County Registry; thence with Paul R. Fitzner property in West and North directions to the Northwest corner of Paul R. Fitzner property also being a point in the South boundary line of John R. VanDine property as described in deed recorded in Deed Book 717, Page 345, Henderson County Registry; thence with the South boundary of Paul R. Fitzner property in a West direction to the Southwest corner of the John R. VanDine property; thence with the West boundary of John R. VanDine property in a North direction to the intersection of a line located 30 feet South of and parallel to the centerline of Little River Road; thence with a line located 30 feet South of and parallel to the centerline of Little River Road in a West direction to the BEGINNING.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. *Structure of Governing Body; Number of Members.* The governing body of the Village of Flat Rock is the Village Council, which has six members and the Mayor.

"Sec. 3.2. *Manner of Electing Council.* (a) The Village is divided into electoral districts as provided in subsection (c) of this section. Each district shall elect two members, and members shall reside in and represent the districts according to the apportionment plan adopted, but the qualified voters of the entire Village elect the members of the Council.

(b) The Village Council shall, following the 2000 census, revise the electoral districts set forth in subsection (c) of this section in accordance with G.S. 160A-23 so that each district contains the same number of persons as nearly as possible beginning with the election in 2001, provided that changes in electoral district boundaries do not affect the right of any member of the council to finish a term.

(c) The electoral districts are:

District No. 1 is all of that geographical area lying West of U.S. Highway 25 and South of Little River Road. Essentially encompassing the subdivisions of Kenmure, Ravenwood, and Stonebridge.

District No. 2 is all of that geographical area lying East of U.S. Highway 25, and, in addition, that geographical area West of U.S. Highway 25 and North of Little River Road to the point of intersection of Trenholm Road and

Little River Road thence following Trenholm Road to its intersection with Rutledge Drive, thence Southeasterly on Rutledge Drive to U.S. Highway 25. Essentially encompassing the subdivisions of Kingwood, Claremont, Pinecrest, Bon Clarken, Highland Lakes, and Flat Rock Forest.

District No. 3 is all of that geographical area lying North of Little River Road and Northwesterly of Trenholm Road from the point of its intersection with Little River Road, thence along Trenholm Road to its intersection with Rutledge Drive (the Northeasterly boundary of the Village of Flat Rock). Essentially encompassing the subdivisions of Pleasant Hill, Woodhaven, Beaumont Estates, Flat Rock Lakes, Teneriffe, Tranquility, Chanteloupe, and Trenholm Woods.

"Sec. 3.3. *Term of Office of Council Members.* In the 1995 municipal election, two members shall be elected from each electoral district. In each electoral district in 1995, the person receiving the highest number of votes is elected to a four-year term, and the person receiving the next highest number of votes is elected to a two-year term. In 1997 and biennially thereafter, one person is elected from each electoral district for a four-year term.

"Sec. 3.4. *Election of Mayor; Term of Office.* The qualified voters of the entire Village elect the Mayor. A Mayor shall be elected in 1995 and quadrennially thereafter for a four-year term.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. *Conduct of Village Elections.* Village officers shall be elected on a nonpartisan basis and results determined by the primary method as provided in G.S. 163-294.

"Sec. 4.2. Until members of the Village Council are elected in 1995 in accordance with the Village Charter and the law of North Carolina, the following shall serve as members of the Interim Village Council:

Donald R. Brems	Arthur R. Malowney
Cyrus C. Highlander	Jane C. Mellon
John W. Jones	Louis C. Bernst

Mel Mausolf

"Sec. 4.3. Until the Mayor is elected in 1995 in accordance with the Village of Flat Rock Charter and the laws of the State of North Carolina, the Interim Village Council shall select from their number one person to serve as Mayor and one person to serve as Vice Mayor. On the Interim Council the Mayor shall not vote except in case of a tie vote.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. *Village to Operate Under Mayor-Council Plan.* The Village of Flat Rock operates under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 5.2. *Boards and Commissions.* The Village Council may appoint such boards, commissions, and committees as it deems necessary or advisable in providing local governmental service to the Village.

"Sec. 5.3. *Streets.* The Village Council may contract with the North Carolina Department of Transportation for street maintenance.

"Sec. 5.4. *Police Protection.* The Village of Flat Rock may contract with the Henderson County Board of Commissioners to provide police protection within the village by the County Sheriff's Department.

"CHAPTER VI.

"ORDINANCES AND REGULATIONS.

"Sec. 6.1. *Ordinances.*

(a) This charter does not affect the special fire tax district for Green River Volunteer Fire Department, the Valley Hill Fire and Rescue Department, and the Blue Ridge Volunteer Fire Department, or any contracts of those departments concerning property within the boundary of the Village.

(b) The following ordinances are in effect within the Village, notwithstanding that under G.S. 153A-122 the Village had not permitted the ordinance to be effective within the municipality, except that if under G.S. 153A-122 the ordinance would have been applicable within the Village only if the Village by resolution permitted the ordinance to be applicable, the Village may provide that the ordinance is no longer applicable within the Village by adopting a resolution withdrawing its permission:

ANIMAL CONTROL ORDINANCE
CATV ORDINANCE
COMMERCIAL INCINERATION FACILITIES
201 FACILITIES PLAN
FARMLAND PRESERVATION ORDINANCE
GRANT PROJECT ORDINANCE
INSPECTION ORDINANCE
JUNKYARD ORDINANCE
LAND DEVELOPMENT ORDINANCE
MOTOR VEHICLE ABANDONMENT
MOUNTAIN RIDGE PROTECTION
OUTDOOR ADVERTISING SIGN ORDINANCE
PARKS/RECREATION ORDINANCE
PROPERTY ADDRESS ORDINANCE (E911)
SOLICITATION ORDINANCE
SUBDIVISION REGULATIONS
ZONING ORDINANCE.

"Sec. 6.2. *Covenants.* This charter does not affect any restrictive covenants, restrictions, and regulations regarding structures or uses within subdivisions in existence before incorporation, and the Village may not make lawful under any Village zoning or other ordinance any structure or use forbidden under such covenants, restrictions, and regulations.

"CHAPTER VII.

"FINANCE.

"Sec. 7.1. *Financing Village Operations.* Annually the Mayor and Council shall prepare a budget, setting forth anticipated revenues and expenses as provided by Chapter 159 of the General Statutes. Copies of the budget shall be made available to the public.

"Sec. 7.2. *Expenditures.* The Mayor and Council shall monitor charter expenditures so as to insure that they do not exceed total revenues."

Sec. 2. From and after the effective date of this act, the citizens and property in the Village of Flat Rock shall be subject to municipal taxes levied for the year beginning July 1, 1995, and for that purpose the Village shall obtain from Henderson County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1995. The Village may adopt a budget ordinance for fiscal year 1995-96 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1995-96, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1995. The Village of Flat Rock is eligible to receive distributions of State funds during fiscal year 1995-96.

Sec. 3. (a) The Henderson County Board of Elections shall conduct an election on a date set by the Henderson County Board of Elections for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Village of Flat Rock, the question of whether or not such area shall be incorporated as the Village of Flat Rock. The date of the election shall be not less than 60 days nor more than 90 days after the date of ratification of this act. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Incorporation of the Village of Flat Rock".

Sec. 4. In the election, if a majority of the votes are cast "FOR incorporation of the Village of Flat Rock", Sections 1 and 2 of this act become effective on the date of the certification of the results of the election. Otherwise, Sections 1 and 2 of this act have no force and effect.

If the date of certification is after the opening date for candidate filing for the 1995 municipal election under G.S. 163-294.2(c), the Henderson County Board of Elections shall establish a special filing period for the election.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of April, 1995.

H.B. 71 **CHAPTER 49**

AN ACT TO PROVIDE THAT FIRE FIGHTERS, EMERGENCY SERVICE PERSONNEL AND NORTH CAROLINA FOREST SERVICE PERSONNEL MAY POSSESS OR CARRY WEAPONS ON SCHOOL GROUNDS WHEN DISCHARGING THEIR OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-269.2(g) reads as rewritten:

"(g) This section shall not apply to:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program

conducted under the supervision of an adult whose supervision has been approved by the school authority;

(2) Armed forces personnel, officers and soldiers of the militia and national guard, law-enforcement personnel, ~~and~~ fire fighters, emergency service personnel, North Carolina Forest Service personnel, and any private police employed by an educational institution, when acting in the discharge of their official duties; or

(3) Home schools as defined in G.S. 115C-563(a)."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of April, 1995.

H.B. 122 **CHAPTER 50**

AN ACT TO EXPAND THE ALLOWABLE USES OF TRANSPORTER PLATES, TO ALLOW OWNERS OF SALVAGE VEHICLES TO RETAIN TITLE TO THE VEHICLES, AND TO EXEMPT OUT-OF-STATE UTILITY VEHICLES THAT ARE USED IN CERTAIN EMERGENCY OPERATIONS FROM THE VEHICLE REGISTRATION AND ROAD TAX REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.2(a) reads as rewritten:

"(a) Who Can Get a Plate. -- A person engaged in a business requiring the limited operation of a motor vehicle for any of the following purposes may obtain a transporter plate authorizing the movement of the vehicle for the specific purpose:

(1) To facilitate the manufacture, construction, rebuilding, or delivery of new or used truck cabs or bodies between manufacturer, dealer, seller, or purchaser.

(2) To repossess a motor vehicle.

(3) To pick up a motor vehicle that is to be repaired or otherwise prepared for sale by a dealer, to road-test the vehicle, if it is repaired, within a 10-mile radius of the place where it is repaired, and to deliver the vehicle to the dealer.

(4) To move a motor vehicle that is owned by ~~a public utility, as defined in G.S. 62-3(23)a,~~ the business and is a replaced vehicle offered for sale.

(5) To take a motor vehicle either to or from a motor vehicle auction where the vehicle will be or was offered for sale.

(6) To road-test a repaired truck whose GVWR is at least 15,000 pounds when the test is performed within a 10-mile radius of the place where the truck was repaired and the truck is owned by a person who has a fleet of at least five trucks whose GVWRs are at least 15,000 pounds and who maintains the place where the truck was repaired.

(7) To move a mobile office, a mobile classroom, or a mobile or manufactured home.

(8) To drive a motor vehicle that is at least 25 years old to and from a parade or another public event and to drive the motor vehicle in that event. A person who owns a motor vehicle that is at least 25 years old is considered to be in the business of collecting those vehicles.

(9) To drive a motor vehicle that is part of the inventory of a dealer to and from a motor vehicle trade show or exhibition or to, during, and from a parade in which the motor vehicle is used.

(10) To drive special mobile equipment in any of the following circumstances:

a. From the manufacturer of the equipment to a facility of a dealer.

b. From one facility of a dealer to another facility of a dealer.

c. From a dealer to the person who buys the equipment from the dealer."

Sec. 2. G.S. 20-85 reads as rewritten:

"*§ 20-85. Schedule of fees.*

(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

(1)	Each application for certificate of title	$35.00
(2)	Each application for duplicate or corrected certificate of title	10.00
(3)	Each application of repossessor for certificate of title	10.00
(4)	Each transfer of registration	10.00
(5)	Each set of replacement registration plates	10.00
(6)	Each application for duplicate registration card	10.00
(7)	Each application for recording supplementary lien	10.00
(8)	Each application for removing a lien from a certificate of title	10.00
(9)	Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale	~~10.00.~~ 10.00
(10)	Each application for a salvage certificate of title made by an insurer	10.00.

(b) Thirty-one dollars and fifty cents ($31.50) of each title fee collected under subdivision (a)(1) of this section and all of the fees collected under ~~the other~~ subdivisions ~~in subsection (a)~~ (a)(2) through (a)(9) of this section shall be credited to the North Carolina Highway Trust ~~Fund; the~~ Fund. The remaining three dollars and fifty cents ($3.50) of the title fee collected under subdivision (a)(1) of this section and the fees collected under

subdivision (a)(10) of this section shall be credited to the Highway Fund. Fifteen dollars ($15.00) of each title fee credited to the Trust Fund under subdivision (a)(1) shall be added to the amount allocated for secondary roads under G.S. 136-176 and used in accordance with G.S. 136-44.5."

Sec. 3. G.S. 20-109.1 reads as rewritten:

"*§ 20-109.1. Surrender of titles to salvage vehicles.*

~~(a) A vehicle shall be deemed to be a salvage vehicle:~~

~~(1) When an insurance company has paid a claim on a vehicle damaged by collision or other occurrence to the extent that the claim paid exceeds seventy-five percent (75%) of the fair market retail value as found in the NADA Pricing Guide Book or other publications approved by the Commissioner, or~~

~~(2) When an insurance company has acquired title to a vehicle in settlement of a theft loss claim, and upon recovery of the vehicle it is determined that the vehicle has been damaged to the extent that it would be considered a salvage vehicle under the provisions of G.S. 20-4.01(33)(d).~~

~~If the salvage vehicle was registered in North Carolina, or if the loss or damages occurred in North Carolina, or if the sale of the salvage vehicle takes place in North Carolina then the insurance company or their authorized agent shall within 10 days after payment of a claim forward to the Division of Motor Vehicles the certificate of title or the comparable ownership document issued by the jurisdiction wherein the vehicle was last registered. The certificate of title or comparable ownership document shall be properly assigned to the insurance company by the vehicle owner. Subsequent transfers of ownership shall be on forms provided by the Division; and such forms shall be mailed by the Division to the insurance company at the address furnished in the assignment of title from the registered owner, unless otherwise requested in writing by the insurance company or their authorized agent. The insurance company shall make an assignment of ownership on the form and deliver it to the purchaser upon sale of the salvage vehicle. The forms shall be considered as proof of ownership for the purpose of G.S. 20-61. In the event the salvage vehicle is rebuilt, an application for reissuance of the title shall be made on a form prescribed by the Division, and the application shall be accompanied by such supporting information as the Division may require.~~

~~(b) Any person acquiring or having possession of any salvage vehicle, purchased in those states that do not require the surrender of titles to salvage vehicles shall within 10 days following delivery of the vehicle and title forward to the Division the certificate of title or comparable ownership document issued by the jurisdiction wherein the vehicle was last registered, with properly executed assignments and reassignments of such title or ownership document. Subsequent transfers of ownership and reissuance of the title shall be as provided for in subsection (a) hereof.~~

~~(c) Except when operated by or at the direction of the Commissioner or his designee, no person shall operate a salvage vehicle prior to compliance with Division requirements prerequisite to application for reissuance of a title. The rebuilt salvage vehicle may be operated following completion of~~

~~the required examination and certification, provided the operation shall be in compliance with Chapter 20.~~

(a) Option to Keep Title. -- When a vehicle is damaged to the extent that it becomes a salvage vehicle and the owner submits a claim for the damages to the insurer of the vehicle, the insurer must determine whether the owner wants to keep the vehicle after payment of the claim. If the owner does not want to keep the vehicle after payment of the claim, the procedures in subsection (b) of this section apply. If the owner wants to keep the vehicle after payment of the claim, the procedures in subsection (c) of this section apply.

(b) Transfer to Insurer. -- If a salvage vehicle owner does not want to keep the vehicle, the owner must assign the vehicle's certificate of title to the insurer when the insurer pays the claim. The insurer must send the assigned title to the Division within 10 days after receiving it from the vehicle owner. The Division must then send the insurer a form to use to transfer title to the vehicle from the insurer to a person who buys the vehicle from the insurer. If the insurer sells the vehicle, the insurer must complete the form and give it to the buyer. If the buyer rebuilds the vehicle, the buyer may apply for a new certificate of title to the vehicle.

(c) Owner Keeps Vehicle. -- If a salvage vehicle owner wants to keep the vehicle, the insurer must give the owner an owner-retained salvage form. The owner must complete the form and give it to the insurer when the insurer pays the claim. The owner's signature on the owner-retained salvage form must be notarized. The insurer must send the completed form to the Division within 10 days after receiving it from the vehicle owner. The Division must then note in its vehicle registration records that the vehicle listed on the form is a salvage vehicle.

(d) Theft Claim on Salvage Vehicle. -- An insurer that pays a theft loss claim on a vehicle and, upon recovery of the vehicle, determines that the vehicle has been damaged to the extent that it is a salvage vehicle must send the vehicle's certificate of title to the Division within 10 days after making the determination. The Division and the insurer must then follow the procedures set in subsection (b) of this section.

(e) Out-of-State Vehicle. -- A person who acquires a salvage vehicle that is registered in a state that does not require surrender of the vehicle's certificate of title must send the title to the Division within 10 days after the vehicle enters this State. The Division and the person must then follow the procedures set in subsection (b) of this section.

~~(d)~~ (f) Sanctions. -- ~~A violation~~ Violation of ~~any provision of~~ this section ~~shall constitute~~ is a Class 1 misdemeanor. In addition to ~~these~~ this criminal ~~penalties, any~~ sanction, a person who violates this section is subject to a civil penalty of up to one hundred dollars ($100.00), to be imposed in the discretion of the Commissioner.

~~(e)~~ (g) Fee. -- ~~The Commissioner shall charge a fee of ten dollars ($10.00) for issuing a title or forms as required by this section.~~ G.S. 20-85 sets the fee for issuing a salvage certificate of title."

Sec. 4. G.S. 20-51 reads as rewritten:

"*§ 20-51. Exempt from registration.*

The following shall be exempt from the requirement of registration and certificate of title:

(1) Any such vehicle driven or moved upon a highway in conformance with the provisions of this Article relating to manufacturers, dealers, or nonresidents.

(2) Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.

(3) Any implement of husbandry, farm tractor, road construction or maintenance machinery or other vehicle which is not self-propelled that was designed for use in work off the highway and which is operated on the highway for the purpose of going to and from such nonhighway projects.

(4) Any vehicle owned and operated by the government of the United States.

(5) Farm tractors equipped with rubber tires and trailers or semitrailers when attached thereto and when used by a farmer, his tenant, agent, or employee in transporting his own farm implements, farm supplies, or farm products from place to place on the same farm, from one farm to another, from farm to market, or from market to farm. This exemption shall extend also to any tractor, implement of husbandry, and trailer or semitrailer while on any trip within a radius of 10 miles from the point of loading, provided that the vehicle does not exceed a speed of 35 miles per hour. This section shall not be construed as granting any exemption to farm tractors, implements of husbandry, and trailers or semitrailers which are operated on a for-hire basis, whether money or some other thing of value is paid or given for the use of such tractors, implements of husbandry, and trailers or semitrailers.

(6) Any trailer or semitrailer attached to and drawn by a properly licensed motor vehicle when used by a farmer, his tenant, agent, or employee in transporting unginned cotton, peanuts, soybeans, corn, hay, tobacco, silage, cucumbers, potatoes, fertilizers or chemicals purchased or owned by such farmer or tenant for personal use in implementing husbandry or irrigation pipes and equipment owned by such farmer or tenant from place to place on the same farm, from one farm to another, from farm to gin, from farm to dryer, or from farm to market, and when not operated on a for-hire basis. The term 'transporting' as used herein shall include the actual hauling of said products and all unloaded travel in connection therewith.

(7) Those small farm trailers known generally as tobacco-handling trailers, tobacco trucks or tobacco trailers when used by a farmer, his tenant, agent or employee, when transporting or otherwise handling tobacco in connection with the pulling, tying or curing thereof.

(8) Any vehicle which is driven or moved upon a highway only for the purpose of crossing or traveling upon such highway from one

side to the other provided the owner or lessee of the vehicle owns the fee or a leasehold in all the land along both sides of the highway at the place or crossing.

(9) Mopeds as defined in G.S. 20-4.01(27)d1.

(10) Devices which are designed for towing private passenger motor vehicles or vehicles not exceeding 5,000 pounds gross weight. These devices are known generally as 'tow dollies.' A tow dolly is a two-wheeled device without motive power designed for towing disabled motor vehicles and is drawn by a motor vehicle in the same manner as a trailer.

(11) Devices generally called converter gear or dollies consisting of a tongue attached to either a single or tandem axle upon which is mounted a fifth wheel and which is used to convert a semitrailer to a full trailer for the purpose of being drawn behind a truck tractor and semitrailer.

(12) Motorized wheelchairs or similar vehicles not exceeding 1,000 pounds gross weight when used for pedestrian purposes by a handicapped person with a mobility impairment as defined in G.S. 20-37.5.

(13) Any vehicle registered in another state and operated temporarily within this State by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities for the purpose of restoring utility services in an emergency outage."

Sec. 5. G.S. 105-449.47 reads as rewritten:

"*§ 105-449.47. Registration of vehicles.*

(a) Requirement. -- A motor carrier may not operate or cause to be operated in this State any vehicle listed in the definition of motor carrier unless both the motor carrier and the motor vehicle are registered with the Secretary for purposes of the tax imposed by this Article.

Upon application, the Secretary shall register a motor carrier and shall issue at least one identification marker for each motor vehicle operated by the motor carrier. A copy of the registration of a motor carrier shall be carried in each motor vehicle operated by the motor carrier when the vehicle is in this State. An identification marker shall be clearly displayed at all times and shall be affixed to the vehicle for which it was issued in the place and manner designated by the Secretary. Registrations and identification markers required by this section shall be issued on a calendar year basis. The Secretary may renew a registration or an identification marker without issuing a new registration or identification marker. All identification markers issued by the Secretary remain the property of the State. The Secretary may withhold or revoke a registration or an identification marker when a motor carrier fails to comply with this Article or Article 36A of this Subchapter.

(b) Exemption. -- This section does not apply to the operation of a vehicle that is registered in another state and is operated temporarily in this State by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities for the purpose of restoring utility services in an emergency outage."

Sec. 6. Sections 2 and 3 of this act become effective July 1, 1995. Sections 4 and 5 of this act become effective October 1, 1995. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of April, 1995.

H.B. 527 **CHAPTER 51**

AN ACT TO DIVIDE SUPERIOR COURT DISTRICT 11 INTO DISTRICTS 11A AND 11B.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-41(a) reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
	3A	Pitt	2
	3B	Carteret, Craven, Pamlico	2
	4A	Duplin, Jones, Sampson	1
	4B	Onslow	1
	5	New Hanover, Pender	3
	6A	Halifax	1
	6B	Bertie, Hertford, Northampton	1
	7A	Nash	1
	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
	8A	Lenoir and Greene	1

	8B	Wayne	1
Second	9	Franklin, Granville, Vance, Warren	2
	9A	Person, Caswell	1
	10A	(part of Wake, see subsection (b))	2
	10B	(part of Wake, see subsection (b))	2
	10C	(part of Wake, see subsection (b))	1
	10D	(part of Wake, see subsection (b))	1
	~~11~~ 11A	Harnett, ~~Johnston,~~ Lee	~~2~~ 1
	11B	Johnston	1
	12A	(part of Cumberland, see subsection (b))	1
	12B	(part of Cumberland, see subsection (b))	1
	12C	(part of Cumberland, see subsection (b))	2
	13	Bladen, Brunswick, Columbus	2
	14A	(part of Durham, see subsection (b))	1
	14B	(part of Durham, see subsection (b))	3
	15A	Alamance	2
	15B	Orange, Chatham	1
	16A	Scotland, Hoke	1
	16B	Robeson	2
Third	17A	Rockingham	2
	17B	Stokes, Surry	2
	18A	(part of Guilford, see subsection (b))	1
	18B	(part of Guilford, see subsection (b))	1
	18C	(part of Guilford, see subsection (b))	1
	18D	(part of Guilford, see subsection (b))	1
	18E	(part of Guilford, see subsection (b))	1
	19A	Cabarrus	1
	19B	Montgomery, Randolph	1
	19C	Rowan	1
	20A	Anson, Moore, Richmond	2

	20B	Stanly, Union	2
	21A	(part of Forsyth, see subsection (b))	1
	21B	(part of Forsyth, see subsection (b))	1
	21C	(part of Forsyth, see subsection (b))	1
	21D	(part of Forsyth, see subsection (b))	1
	22	Alexander, Davidson, Davie, Iredell	2
	23	Alleghany, Ashe, Wilkes, Yadkin	1
Fourth	24	Avery, Madison, Mitchell, Watauga, Yancey	1
	25A	Burke, Caldwell	2
	25B	Catawba	2
	26A	(part of Mecklenburg, see subsection (b))	2
	26B	(part of Mecklenburg, see subsection (b))	2
	26C	(part of Mecklenburg, see subsection (b))	2
	27A	Gaston	2
	27B	Cleveland, Lincoln	2
	28	Buncombe	2
	29	Henderson, McDowell, Polk, Rutherford, Transylvania	2
	30A	Cherokee, Clay, Graham, Macon, Swain	1
	30B	Haywood, Jackson	1."

Sec. 2. (a) The superior court judgeship allocated to new District 11A in Section 1 of this act shall be filled by the superior court judge from current District 11 who resides in Harnett County. The term of that judge expires December 31, 1998. That judge's successor shall be elected in the 1998 general election.

(b) The superior court judgeship allocated to new District 11B in Section 1 of this act shall be filled by the superior court judge from current District 11 who resides in Johnston County. The term of that judge expires December 31, 1998. That judge's successor shall be elected in the 1998 general election.

Sec. 3. Sections 1 and 2 of this act become effective October 1, 1995, or the date upon which those sections are approved under section 5 of the Voting Rights Act of 1965, whichever is later. The remainder of this act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 27th day of April, 1995.

H.B. 137 **CHAPTER 52**

AN ACT TO MODIFY THE MEMBERSHIP OF THE ROCKINGHAM TOURISM DEVELOPMENT AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Section 2(a) of Chapter 322 of the 1991 Session Laws reads as rewritten:

"(a) Appointment and Membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act and shall be composed of the following ~~eleven~~ 12 members:

(1) The Executive Director of the Rockingham County Economic Development Commission, who shall serve as an ex officio, nonvoting member.

(2) A county commissioner appointed by the Rockingham County Board of Commissioners, who shall serve as an ex officio, nonvoting member.

(3) ~~Four~~ Two owners or operators of hotels, motels, or other taxable ~~accommodations,~~ accommodations and two individuals involved in tourist businesses who have demonstrated an interest in tourism development, appointed as follows: one by the Rockingham County Board of Commissioners and one by each chamber of commerce in Rockingham County. ~~Two of these four appointees shall own or operate hotels, motels, or other accommodations with more than 50 rental units and two shall own or operate hotels, motels, or other accommodations with 50 or fewer rental units.~~

(4) Five individuals involved in ~~tourist businesses who have demonstrated an interest in tourism development and may or may not own or operate hotels, motels, or other taxable accommodations,~~ businesses or professions that are concerned with or affected by tourism development in such a way that their expertise would benefit the Authority, appointed as follows: one by each chamber of commerce in Rockingham County and two by the Rockingham County Board of Commissioners.

(5) The President of the Chinqua-Penn Foundation, Inc., who shall serve as an ex officio, nonvoting member.

All members of the Authority shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term which they are appointed to fill. Except as provided in subsection (b) for initial members, members shall serve three-year terms. Members may serve no more than two consecutive terms. The members shall elect a chair from the membership of the Authority, who shall serve for a term of two years. The Authority

shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Rockingham County shall be the ex officio finance officer of the Authority."

Sec. 2. This act is effective upon ratification and applies to appointments made on or after that date.

In the General Assembly read three times and ratified this the 1st day of May, 1995.

H.B. 146 **CHAPTER 53**

AN ACT TO ALLOW THE CITY OF LUMBERTON TO ENACT ORDINANCES REGULATING THE TOWING OF MOTOR VEHICLES THAT HAVE BEEN ABANDONED AND ARE NOT COVERED BY FINANCIAL RESPONSIBILITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-303.2(a) reads as rewritten:

"(a) A municipality may by ordinance regulate, restrain or prohibit the abandonment of junked motor vehicles on public grounds and on private property within the municipality's ordinance-making jurisdiction upon a finding that such regulation, restraint or prohibition is necessary and desirable to promote or enhance community, neighborhood or area appearance, and may enforce any such ordinance by removing or disposing of junked motor vehicles subject to the ordinance according to the procedures prescribed in this section. The authority granted by this section shall be supplemental to any other authority conferred upon municipalities. Nothing in this section shall be construed to authorize a municipality to require the removal or disposal of a motor vehicle kept or stored at a bona fide 'automobile graveyard' or 'junkyard' as defined in G.S. 136-143.

For purposes of this section, the term 'junked motor vehicle' means a vehicle that does not display a current license plate and that:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or

(3) Is more than five years old and appears to be worth less than one hundred dollars ($100.00)~~.~~ , or

(4) The owner does not possess the financial responsibility for as required by Article 9A of Chapter 20 of the General Statutes."

Sec. 2. This act applies to the City of Lumberton only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1995.

H.B. 212 **CHAPTER 54**

AN ACT TO AUTHORIZE THE CITY OF GREENSBORO TO USE THE SINGLE-PRIME CONTRACT SYSTEM FOR THE EXPANSION OF SEWAGE TREATMENT FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-128(b) reads as rewritten:

"(b) Notwithstanding the provisions of subsection (a) of this section, the State, a county, municipality, department, board, commission, public hospital, or other public body, or an officer thereof may use the single-prime contract system on the construction, extension, and improvement of sewage treatment facilities as it relates to the T. Z. Osborne Sewage Treatment Plant and its ancillary facilities and may prequalify bidders for all construction contracts.

If the public body chooses to use the single-prime contract system, it ~~must~~ may also seek bids for the project under subsection (a) of this section and award the contract to the lowest responsible bidder or bidders for the total project.

For the single-prime contract system all bidders must identify on their bid the contractors they have selected for the subdivisions or branches of work for:

(1) Heating, ventilating, and air conditioning;
(2) Plumbing;
(3) Electrical; and
(4) General."

Sec. 2. In the event Chapter 480 of the 1989 Session Laws expires, it shall remain in effect as to the City of Greensboro.

Sec. 3. This act applies only to the City of Greensboro.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1995.

H.B. 343 **CHAPTER 55**

AN ACT TO CLARIFY THE LAW ON HUNTING WITH DOGS IN ANSON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 231 of the Session Laws of 1987 reads as rewritten:

"Sec. 3. Notwithstanding the provisions of G.S. 113-291.2 and regulations issued pursuant thereto, the season for hunting deer with firearms in Anson County shall last seven weeks. During the season for hunting deer with firearms in Anson County, deer may be hunted with the aid of dogs east of North Carolina Highway 742 only during the last five weeks of the season, subject to the restrictions of G.S. 113-291.5(b) and the regulations issued pursuant thereto. The hunting of deer with dogs in Anson County west of Highway 742 is prohibited."

Sec. 2. This act applies only to Anson County.

Sec. 3. This act is effective on ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1995.

H.B. 493 **CHAPTER 56**

AN ACT TO REPEAL A LOCAL ACT MODIFYING THE VOTE REQUIRED FOR PRIVATE SALE OF PROPERTY BY THE CITY OF GREENSBORO FOR PUBLIC PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 92 of the 1993 Session Laws is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1995.

H.B. 529 **CHAPTER 57**

AN ACT TO AUTHORIZE THE RECREATION COMMISSION OF THE TOWN OF LINCOLNTON TO CONVEY BY PRIVATE SALE CERTAIN PROPERTY TO THE CITY OF LINCOLNTON.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the Recreation Commission of the Town of Lincolnton may convey at private sale, with or without monetary consideration, any or all of its right, title, and interest in the following described property, known as the "Oaklawn Recreation Center", to the City of Lincolnton:

BEGINNING at a point in the center of the S. A. L. railroad, Northeast corner of Lincoln Heights Subdivision (iron stake located on south edge of said railroad) and runs thence with Lincoln Heights Subdivision line South 24 deg. 10 min. East 253 ft. to an iron stake, the south edge of Hickory Avenue, and corner of Oaklawn School property, North 60 deg. East 170 ft., more or less, to a stake in the western edge of the bypass right of way, also corner of school property; thence, with the western edge of bypass right of way 214 ft, more or less, to a point in the center of the S. A. L. railroad (iron stake located on south bank of said railroad); thence, with the center of the S. A. L. railroad South 75 deg. West 240', more or less, to a point in the center of said railroad, the point of BEGINNING, containing 1.05 ACRES, more or less.

Sec. 2. The Chairman and the Secretary of the Recreation Commission of the Town of Lincolnton are empowered to execute the deed conveying the property described herein.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1995.

H.B. 553 **CHAPTER 58**

AN ACT TO REPEAL A LOCAL ACT REQUIRING HARNETT COUNTY'S ANIMAL CONTROL OFFICERS TO PERFORM THEIR DUTIES UNDER THE SUPERVISION AND CONTROL OF THE HARNETT COUNTY HEALTH DIRECTOR.

The General Assembly of North Carolina enacts:

Section 1. Chapter 664 of the 1963 Session Laws is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1995.

H.B. 604 **CHAPTER 59**

AN ACT TO AUTHORIZE THE TOWN OF SUNSET BEACH TO REGULATE AND CONTROL DEBRIS AND OTHER MATERIALS RESULTING FROM BOATING ACCIDENTS.

The General Assembly of North Carolina enacts:

Section 1. A town may adopt ordinances to provide for the removal of debris and other material resulting from boating collisions or other boating accidents occurring in the Atlantic Ocean or in the Intracoastal Waterway adjacent to the town, to the extent that the debris or other material threatens the public safety and exists within the town's boundaries or within its extraterritorial jurisdiction. An ordinance enacted pursuant to this act may require the owner, lessee, or other responsible party to remove all debris or other material resulting from a collision or other accident involving the boat in a prompt and reasonable manner. Such an ordinance may also provide that if the responsible party fails or refuses to comply within a specified time, the town may summarily remove the debris or other material at the expense of the responsible party. The ordinance may also provide that if not paid, the expense shall be a lien upon any property owned by the responsible party that is situated within the corporate limits or extraterritorial jurisdiction, including any salvageable material remaining from the boating collision or boating accident, and may be collected as unpaid taxes.

Sec. 2. This act applies only to the Town of Sunset Beach.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1995.

S.B. 321 **CHAPTER 60**

AN ACT AUTHORIZING THE STATE BOARD OF EDUCATION TO ADOPT ELIGIBILITY RULES FOR INTERSCHOLASTIC ATHLETIC COMPETITION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-12 is amended by adding a new subdivision to read:

"(23) Power to Adopt Eligibility Rules for Interscholastic Athletic Competition. -- The State Board of Education may adopt rules governing interscholastic athletic activities conducted by local boards of education, including eligibility for student participation. The State Board of Education may authorize a designated

organization to apply and enforce the Board's rules governing participation in interscholastic athletic activities at the high school level."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of May, 1995.

H.B. 248 **CHAPTER 61**

AN ACT TO CLARIFY THAT UNION COUNTY AND COLUMBUS COUNTY MAY ASSESS A FIRE PROTECTION FEE ON CERTAIN MOBILE HOMES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-236, as it applies to Union and Columbus Counties pursuant to Chapter 883 of the 1991 Session Laws and Section 2 of Chapter 617 of the 1993 Session Laws (Reg. Sess. 1994), reads as rewritten:

"*§ 153A-236. Fee-supported fire districts.*

(a) Request for Fee-supported District. -- A county may create a fee-supported fire district for insurance grading purposes if it receives one of the following:

(1) A written request to create the district signed by at least two-thirds of the members of the board of directors of a fire department that contracts with the county to provide fire protection within an area of the county.

(2) A petition requesting creation of a district signed by fifteen percent (15%) of the resident freeholders living in an area in the county. The petition must describe the area to be designated as the district.

(b) Creation of Fee-supported District. -- Upon receipt of a request as provided in subsection (a), the county may adopt a resolution establishing a fee-supported fire district and imposing annual fees for the provision of fire protection services within the district. The district may not include any area that is within (i) a tax-supported fire district established under Article 3A of Chapter 69 of the General Statutes; (ii) a county service district established under Article 16 of this Chapter for fire protection purposes; or (iii) another fee-supported fire district. The district may not include any area that is within the corporate limits of a municipality unless the governing body of the municipality agrees to the inclusion. However, it is not necessary to obtain the consent of a municipality if the municipality has not levied a tax, performed any official act, nor held any elections within a period of 10 years preceding the adoption of the resolution including the area within the district.

(c) Fees. -- The fees imposed by the county may not exceed the cost of providing fire protection services within the district and may be imposed on owners of all real property that benefits from the availability of fire ~~protection.~~ protection and on owners of all manufactured or mobile homes that benefit from the availability of fire protection. For the purpose of this section, the term 'fire protection' includes furnishing emergency medical,

rescue, and ambulance services to protect persons in the district from injury or death. The county shall establish a schedule of fees for different classes of property and the fee for each class of property shall be proportional to the estimated cost of providing fire protection services to that class of property. The schedule of fees shall include the following classes of property and the fee on each class of property shall not exceed the following maximums:

(1) A single-family dwelling or manufactured or mobile home, and appurtenant structures, plus up to five acres of surrounding land. The fee on this class of property may not exceed fifty dollars ($50.00) per site per year.

(2) Unimproved land other than the five acres of land classified as part of a single-family dwelling or manufactured or mobile home. The fee on this class of property may not exceed two cents (2¢) per acre per year. The county may establish a minimum fee for unimproved land of not more than five dollars ($5.00) per year.

(3) An animal production or horticultural operation. The fee on this class of property may not exceed ten dollars ($10.00) per site per year.

(4) A commercial facility other than an animal production or horticultural operation. The fee on this class of property may not exceed fifty dollars ($50.00) per site per year for commercial facilities with structures encompassing less than 5,000 square feet and one hundred dollars ($100.00) per site per year for commercial facilities with structures encompassing 5,000 square feet or more.

(5) A multiple-family dwelling. The fee on a duplex may not exceed fifty dollars ($50.00) per building per year. The fee on a triplex may not exceed seventy-five dollars ($75.00) per building per year. The fee on any other multiple-family dwelling may not exceed one hundred dollars ($100.00) per building per year.

(6) Any other class of property selected by the county. The fee on these classes of property may not exceed fifty dollars ($50.00) per year.

(d) Billing of Fees. -- The county may include a fee imposed under this section on the property tax bill for the real ~~property~~ property, or the manufactured or mobile home, on which the fee is imposed.

(e) Use of Fees. -- The county shall credit the fees collected within the district to a separate fund to be used only to furnish fire protection in the district. The board of commissioners shall administer the fund to provide fire protection by one or more of the following methods:

(1) Contracting with any municipality, any incorporated nonprofit volunteer or community fire department, or the Department of Environment, Health, and Natural Resources.

(2) Furnishing fire protection itself if it maintains an organized fire department.

(3) Establishing a fire department in the district.

(f) Audit of Fire Department. -- If the county contracts with a fire department to provide fire protection services in a fee-supported fire district, the fire department shall prepare an annual budget based on anticipated

revenues and shall submit the budget to the county for processing and approval through the county's regular budget procedure. Upon request of the county, the fire department shall make quarterly or semiannual reports to the county detailing its revenues, expenditures, and activities. The county may audit the fire department's financial records upon reasonable notice to the fire department.

(g) Extension of Area of District. -- The county may by resolution annex to any fee-supported fire district any territory that it could include in a new district under subsection (c), upon finding that:

(1) The area to be annexed is contiguous to the district, with at least one-eighth of the area's aggregate external boundary coincident with the existing boundary of the district; and

(2) The area to be annexed requires the services of the district.

The county may also by resolution annex to any fee-supported fire district any territory it could include in a new district under subsection (c) if one hundred percent (100%) of the real property owners in the territory to be annexed have petitioned the board of commissioners for annexation to the service district.

The area of any fee-supported fire district may be increased by including within the boundaries of the district any adjoining territory lying within a municipality if the territory is not already included in another fire protection district, and both the municipal governing body and the county commissioners of the county in which the district is located agree by resolution to the inclusion. However, it is not necessary to obtain the consent of a municipality if the municipality has not levied a tax, performed any official act, nor held any elections within a period of 10 years preceding the adoption of the resolution including the area within the district.

(h) Annexation of District. -- When any portion of a fee-supported fire district has been annexed by a municipality furnishing fire protection to its citizens, and the municipality has not agreed to allow territory within it to be in the district, then the portion of the district annexed is no longer part of a fee-supported district. For the purposes of this section and regardless of the actual effective date of annexation, the date of annexation shall be considered to be a date in the month of June.

(i) Abolition of District. -- Upon finding that there is no longer a need for a given fee-supported fire district, the board of commissioners may repeal the resolution establishing the district and thus abolish the district."

Sec. 2. This act applies to Columbus and Union Counties only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of May, 1995.

H.B. 331 **CHAPTER 62**

AN ACT TO ALLOW DISABLED PERSONS TO APPLY TO THE WILDLIFE RESOURCES COMMISSION FOR HUNTING AND FISHING METHODS EXEMPTIONS TO PROVIDE REASONABLE ACCOMMODATIONS FOR THEIR DISABILITIES.

The General Assembly of North Carolina enacts:

Section 1. Article 22 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"*§ 113-297. Method exemptions for disabled persons.*

(a) Any person whose physical disability makes it impossible for the person to hunt or fish by conventional methods for one year or more may apply to the Wildlife Resources Commission for a hunting or fishing methods exemption allowing that person to hunt or fish in a manner that would otherwise be prohibited by rules adopted by the Commission. The application shall be accompanied by a signed statement from a physician containing the following information:

(1) The nature of the person's disability;

(2) The necessity of the exemption in order to allow the person to hunt or fish; and

(3) Whether the disability is permanent or temporary and, if temporary, the length of time after which the physician anticipates that the person may be able to hunt or fish without the exemption.

The Wildlife Resources Commission may authorize any reasonable exemption in order to permit a disabled person complying with the requirements of this section to hunt or fish and may issue a permit describing the exemption made in each case. The permit may be permanent or, if the disability is temporary, the permit may coincide with the length of time the signed physician's statement indicates the disability is expected to last. A person issued a permit under this section shall possess the permit while hunting or fishing in the exempted manner.

(b) In addition to providing disabled persons reasonable exemptions from rules adopted by the Wildlife Resources Commission, the Commission may permit a person complying with the application procedure outlined in subsection (a) of this section to use a crossbow or other specially equipped bow if the physician's statement indicates that the person is incapable of arm movement sufficient to operate a longbow, recurve bow, or compound bow."

Sec. 2. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 2nd day of May, 1995.

H.B. 773 **CHAPTER 63**

AN ACT TO PROVIDE FOR DIRECT ACCESS BY WOMEN TO OBSTETRICIAN-GYNECOLOGISTS.

The General Assembly of North Carolina enacts:

Section 1. Article 51 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"*§ 58-51-38. Direct access to obstetrician-gynecologists.*

(a) Each health benefit plan shall allow each female plan participant or beneficiary age 13 or older direct access within the health benefit plan, without prior referral, to the health care services of an obstetrician-gynecologist participating in the health benefit plan, within the benefits

provided under that health benefit plan pertaining to obstetrician-gynecologist services.

For purposes of this section:

(1) 'Health benefit plan' means an HMO subscriber contract or any preferred provider, exclusive provider, or other managed care arrangement offered under a health benefit plan, as defined in G.S. 58-50-110(11).

(2) 'Health care services' means the full scope of medically necessary services provided by the participating obstetrician-gynecologist in the care of or related to the female reproductive system and breasts, and in performing annual screening, counseling, and immunization for disorders and diseases in accordance with the most current published recommendations of the American College of Obstetricians and Gynecologists, and includes services provided by nurse practitioners, physician's assistants, and certified nurse midwives in collaboration with the obstetrician-gynecologist in the care of the participant or beneficiary.

(3) 'Benefits' are those medical services or other items to which an individual is entitled under the terms of her contract with a health benefit plan, as approved by the Department of Insurance.

(b) Each health benefit plan shall inform female participants and beneficiaries in writing of the provisions of this section. The information shall be provided in benefit handbooks and materials and enrollment materials."

Sec. 2. This act becomes effective January 1, 1996, and applies to health benefit plans issued, renewed, or amended on or after that date. For purposes of this act, renewal is presumed to occur on each anniversary of the date when coverage was first effective on the person or persons covered by the plan.

In the General Assembly read three times and ratified this the 2nd day of May, 1995.

H.B. 405 **CHAPTER 64**

AN ACT TO AUTHORIZE THE WILDLIFE RESOURCES COMMISSION TO REGULATE THE MANNER OF TAKING WILDLIFE NOT CLASSIFIED AS GAME ANIMALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-291.1(a) reads as rewritten:

"(a) Except as otherwise provided, game may only be taken between a half hour before sunrise and a half hour after sunset and only by one or a combination of the following methods:

(1) With a rifle, except that rifles may not be used in taking wild turkeys.

(2) With a shotgun not larger than number 10 gauge.

(3) With a bow and arrow of a type prescribed in the rules of the Wildlife Resources Commission.

(4) With the use of dogs.

(5) By means of falconry.

Fur-bearing animals may be taken at any time during open trapping season with traps authorized under G.S. ~~113-291.6,~~ 113-291.6 and as otherwise authorized pursuant to this subsection, and rabbits may be box-trapped in accordance with rules of the Wildlife Resources Commission. ~~Nongame animals and birds open to hunting may be taken during the hours authorized by rule during any open season by the methods for taking game.~~ The Wildlife Resources Commission may adopt rules prescribing the manner of taking wild birds and wild animals not classified as game. Use of pistols in taking wildlife is governed by subsection (g). The Wildlife Resources Commission may prescribe the manner of taking wild animals and wild birds on game lands and public hunting grounds."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of May, 1995.

H.B. 572 **CHAPTER 65**

AN ACT CHANGING THE METHOD OF ELECTION OF THE LAURINBURG CITY COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. Section 3-2 of the Charter of the City of Laurinburg, being Chapter 586 of the Session Laws of 1989, reads as rewritten:

"Sec. 3-2. *Manner of Election of Council.* ~~The qualified voters of the entire City elect the members of the City Council.~~ Two of the five City Council members shall be elected from District 1, two from District 2, and one from the City at large. To be eligible to be a candidate for and to hold one of the Council seats representing a district, a person must reside in that district. Only voters who reside in a district shall be eligible to vote for the Council members representing that district. All voters in the City may vote for the at-large member."

Sec. 2. Section 3-3 of the Charter of the City of Laurinburg, being Chapter 586 of the Session Laws of 1989, reads as rewritten:

"Sec. 3-3. *Term of Office of Members of the City Council.* ~~Members of the Council are elected to two-year and four-year terms. In 1989, and each two years thereafter, three members of the Council shall be elected. The two members receiving the larger number of votes shall serve for a term of four years and the remaining member so elected shall serve the term of two years.~~ (a) In the regular City election in 1995 three council members shall be elected, two from District 1 and one from District 2. All candidates for the two seats from District 1 shall be listed together on the ballot and each voter shall be allowed to cast up to two votes. The candidate for District 1 receiving the most votes shall be elected for a term to expire in 1999, and the candidate receiving the next highest number of votes shall be elected for a term to expire in 1997. The council member elected in 1995 from District 2 shall be elected for a term to expire in 1999.

(b) In 1997 and every two years thereafter, three council members shall be elected: One from District 1, one from District 2, and one at-large.

The council members elected from Districts 1 and 2 shall be elected for four-year terms, and the member elected at large shall be elected for a two-year term."

Sec. 3. The Charter of the City of Laurinburg, being Chapter 586 of the Session Laws of 1989, is amended by adding the following new section:

"Sec. 3-5. *Council Election Districts.* The two districts for the election of members of the City Council shall be:

District 1 -- All of annexation areas #1, 2 and 3 as described in City Ordinance No. O-1994-01, plus that portion of the City as it existed before the 1994 annexation east of the following line running north to south from the point where the pre-1994 City boundary crossed Aberdeen Road (U.S. Highways 15 and 501 Business) on the north side of the City: South on Aberdeen Road to Gill Street, west along Gill to the township line separating Laurel Hill Township and Stewartsville Township, west along the township line to Leiths Creek, southeast along the creek to Gill Street (so as to encompass within District 1 census blocks 127B and 152 of Tract 102) south on Gill to the Seaboard Air Line Railroad tracks, east along the tracks one block to Main Street (U.S. 15 and 501 and 401 Business), south on Main to Tucker Street, east on Tucker two blocks to Pine Street, south on Pine to Hammond Drive, south on Hammond to Pine Street, west on Pine to Johns Road, north on Johns to Biggs Street, south on Biggs to Ivy Street, west on Ivy one block to Main Street, south on Main to U.S. Highway 74 Bypass, and east on the bypass to the city limits.

District 2 -- All of annexation area #4 as described in Laurinburg City Ordinance No. O-1994-01 plus that portion of the City as it existed before the 1994 annexation west and south of the line described above as the boundary for District 1."

Sec. 4. Following the 1995 election, the two incumbent council members elected in 1993 for terms that do not expire until 1997 shall be designated as holding the following seats until their terms expire: Clarence McPhatter, II, shall be designated as the at-large council member, and Harvey H. Butler, Jr., shall be designated as a member for District 2. If Harvey H. Butler, Jr., shall die, resign, or otherwise vacate his office before the end of his term, the person appointed to fill the vacancy must reside in District 2.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1995.

H.B. 591 **CHAPTER 66**

AN ACT TO CHANGE THE MANNER OF ELECTION OF THE STOKES COUNTY BOARD OF EDUCATION TO NONPARTISAN ELECTION AT THE TIME OF THE GENERAL ELECTION, AND TO PROVIDE THAT EACH ELECTION, TWO PERSONS SHALL BE ELECTED FOR FOUR-YEAR TERMS AND ONE PERSON SHALL BE ELECTED TO A TWO-YEAR TERM.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 115C-37, beginning in 1996 the Stokes County Board of Education shall be elected on a nonpartisan basis at the time set by G.S. 163-1 for the general election in each even-numbered year as terms expire. The election shall be conducted on a nonpartisan plurality basis, with the results determined in accordance with G.S. 163-292. Candidates shall file notices of candidacy not earlier than noon on the first Monday in June and not later than noon on the last Friday in July. The names of the candidates shall be printed on the ballot without reference to any party affiliations.

Sec. 2. Notwithstanding the provisions of G.S. 115C-37, in 1998 and biennially thereafter, three members shall be elected to the Stokes County Board of Education. The two persons receiving the highest numbers of votes are elected to four-year terms, and the person receiving the next highest number of votes is elected to a two-year term.

Sec. 3. Except as provided by this act, the election shall be conducted in accordance with the applicable provisions of Chapters 115C and 163 of the General Statutes.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1995.

H.B. 595 **CHAPTER 67**

AN ACT TO PROVIDE FOR THE NONPARTISAN ELECTION OF THE CRAVEN COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any provision of Chapter 236, Session Laws, 1983, the members of the Craven County Board of Education shall be hereafter elected on a nonpartisan basis. Each member must reside in the district which he represents.

Sec. 2. Beginning with the 1996 primary election, and quadrennially thereafter, if when the filing period closes, there are more than two candidates in a district, there shall be a nonpartisan primary to narrow the field of candidates to two candidates for each of Districts 1, 3, 5, and 7. Only qualified voters of each of those districts may vote in the primary for that district. If only one or two candidates file in a district, no primary shall be held.

The results of the primary election shall be determined by the plurality method pursuant to the provisions of G.S. 163-292.

Sec. 3. Beginning with the general election of 1996, and quadrennially thereafter, one of the nominees from each of Districts 1, 3, 5, and 7 will be elected by the qualified voters of the entire county.

Sec. 4. Beginning with the 1998 primary election, and quadrennially thereafter, if when the filing period closes, there are more than two candidates in a district, there shall be a nonpartisan primary to narrow the field of candidates to two candidates for each of Districts 2, 4, and 6. Only qualified voters of the districts may vote in the primary for that district. If only one or two candidates file in a district, no primary shall be held. The

results of the primary election will be determined by the plurality method pursuant to the provisions of G.S. 163-292.

Sec. 5. Beginning with the general election of 1998 and quadrennially thereafter, one of the nominees from each of Districts 2, 4, and 6 will be elected by the qualified voters of the entire county.

Sec. 6. The candidates elected to the Craven County Board of Education shall qualify and take office on the first Monday in December of the year in which elected.

Sec. 7. This act does not affect the terms of office of any member of the Board of Education elected in 1994.

Sec. 8. Vacancies occurring on the Craven County Board of Education for positions elected on a nonpartisan basis shall be filled in accordance with the provisions of G.S. 115C-37(f). Vacancies occurring on the Craven County Board of Education for positions elected on a partisan basis shall be filled in accordance with the provisions of G.S. 115C-37.1.

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1995.

H.B. 598 **CHAPTER 68**

AN ACT TO REVISE PENDER COUNTY COMMISSIONER DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 245, Session Laws of 1947, as amended by Sections 1 and 2 of Chapter 212, Session Laws of 1949, and as rewritten by Section 1 of Chapter 1183 of the 1981 Session Laws, reads as rewritten:

"Section 1. (a) For the purpose of electing its county commissioners, the County of Pender is divided into five districts, as follows:

~~(1) District 1 shall consist of Burgaw Township.~~

~~(2) District 2 shall consist of Topsail Township.~~

~~(3) District 3 shall consist of Grady, Long Creek, and Rocky Point Townships.~~

~~(4) District 4 shall consist of Canetuck, Caswell, and Columbia Townships.~~

~~(5) District 5 shall consist of Holly and Union Townships.~~

District 1: Pender County: Lower Topsail *, Upper Topsail *: Tract 9802: Block Group 4: Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425; Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506, Block 507, Block 508, Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515, Block 516, Block 517, Block 518, Block 525, Block 526, Block 527; Scott's Hill *.

District 2: Pender County: North Burgaw *: Tract 9803: Block Group 1: Block 144A, Block 146; Block Group 2: Block 254A, Block 254B; Tract

9804: Block Group 1: Block 106; South Burgaw *: Tract 9804: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 116, Block 117; Block Group 2: Block 201, Block 202, Block 213, Block 214, Block 215, Block 221, Block 222, Block 224; Middle Holly *, Upper Holly *, Lower Union *: Tract 9803: Block Group 2: Block 255; Rocky Point *: Tract 9802: Block Group 2: Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227, Block 228, Block 229, Block 230, Block 231A, Block 232, Block 233, Block 234A, Block 235, Block 236A, Block 237, Block 253, Block 254, Block 255, Block 256, Block 257, Block 258, Block 259, Block 260, Block 261, Block 262, Block 285, Block 286; Upper Topsail *: Tract 9802: Block Group 1: Block 181B; Block Group 2: Block 201C, Block 219B, Block 231B, Block 234B, Block 236B, Block 238, Block 239, Block 240, Block 241, Block 242, Block 243, Block 245, Block 246, Block 247, Block 287, Block 288, Block 289, Block 290, Block 291, Block 292, Block 293, Block 294, Block 295, Block 296, Block 297; Block Group 3: Block 319, Block 324, Block 325, Block 326, Block 327, Block 328; Block Group 4: Block 401, Block 402, Block 403; Surf City *.

District 3: Pender County: Grady *: Tract 9805: Block Group 1: Block 182B, Block 183B, Block 184B, Block 185, Block 186, Block 187, Block 188; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426, Block 427, Block 428, Block 429, Block 430, Block 431, Block 432, Block 433, Block 434, Block 435, Block 436, Block 437, Block 438, Block 439, Block 440, Block 441, Block 442, Block 443, Block 444, Block 445, Block 446, Block 447, Block 448, Block 449, Block 450, Block 451, Block 452, Block 453, Block 454, Block 458, Block 459, Block 460, Block 461; Long Creek *, Rocky Point *: Tract 9804: Block Group 2: Block 219C, Block 220B, Block 223; Block Group 5: Block 549D, Block 551C, Block 552C, Block 556C; Tract 9806: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131, Block 132, Block 133, Block 134, Block 135; Block Group 2: Block 201, Block 202, Block 203B, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213B, Block 214B, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227, Block 228, Block 229, Block 230, Block 231, Block 232, Block 233; Block Group 3: Block 337B, Block 337C, Block 338B.

District 4: Pender County: North Burgaw *: Tract 9803: Block Group 2: Block 246A, Block 247B, Block 256A, Block 257A, Block 258A; Tract 9804: Block Group 1: Block 107, Block 108, Block 109A, Block 109B, Block 110, Block 115; Block Group 3: Block 301A, Block 301B, Block

301C, Block 302A, Block 302B, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 352A, Block 352B; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408A, Block 409A, Block 418A, Block 420A, Block 424A, Block 425A, Block 426, Block 427, Block 428, Block 429, Block 430, Block 431, Block 432, Block 433, Block 437, Block 438, Block 439, Block 440, Block 441, Block 442A, Block 442B, Block 443, Block 444, Block 445, Block 446A, Block 446B, Block 447, Block 448, Block 449, Block 450, Block 451, Block 452, Block 453A, Block 453B, Block 454, Block 455, Block 456, Block 457, Block 458, Block 459, Block 460, Block 461, Block 462, Block 463, Block 464, Block 465, Block 466, Block 467A, Block 467B, Block 468A, Block 468B, Block 469, Block 470, Block 481, Block 482, Block 483; South Burgaw *: Tract 9804: Block Group 1: Block 111, Block 112, Block 113, Block 114; Block Group 2: Block 203A, Block 203B, Block 203C, Block 204A, Block 204B, Block 205A, Block 205B, Block 205C, Block 206A, Block 206B, Block 206C, Block 207, Block 208A, Block 208B, Block 209, Block 210A, Block 210B, Block 211A, Block 211B, Block 212, Block 216, Block 217A, Block 217B, Block 218A, Block 218B, Block 219A, Block 219B, Block 220A; Block Group 3: Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330, Block 331, Block 332, Block 333, Block 334, Block 335, Block 336, Block 337, Block 338, Block 339, Block 340, Block 341, Block 342, Block 343, Block 344, Block 345, Block 346A, Block 346B, Block 347, Block 348A, Block 348B, Block 349, Block 350, Block 351, Block 353; Block Group 4: Block 434, Block 435, Block 436, Block 471, Block 472, Block 473, Block 474, Block 475, Block 476, Block 477, Block 478, Block 479, Block 480; Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506, Block 507, Block 508, Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515, Block 516, Block 517, Block 518, Block 519, Block 520, Block 521, Block 522, Block 523, Block 524, Block 525, Block 526, Block 527, Block 528, Block 529, Block 530, Block 531, Block 532, Block 533, Block 534, Block 535, Block 536, Block 537, Block 538, Block 539, Block 540, Block 541A, Block 541B, Block 542A, Block 542B, Block 542C, Block 543, Block 544A, Block 544B, Block 544C, Block 545A, Block 545B, Block 546A, Block 547A, Block 548A, Block 549A, Block 549B, Block 550, Block 551A, Block 551B, Block 552A, Block 552B, Block 553, Block 554A, Block 554B, Block 554C, Block 554D, Block 555, Block 556A, Block 556B; Tract 9806: Block Group 3: Block 301A; Lower Union *: Tract 9802: Block Group 1: Block 106B, Block 107B, Block 108, Block 109, Block 110, Block 111, Block 112B, Block 113B, Block 129B, Block 130B, Block 131B; Tract 9803: Block Group 1: Block 125A, Block 125B, Block 128, Block 129, Block 130, Block 131A, Block 131B, Block 132, Block 133A, Block 133B, Block 135, Block 136, Block 137, Block 138, Block 139A, Block 139B, Block 140, Block 141, Block 142, Block 143, Block 144B, Block 145, Block 147, Block 148, Block 149; Block Group 2: Block 230A, Block 230B, Block 231A, Block 231B, Block 232A, Block 232B, Block

233, Block 239, Block 240, Block 241, Block 242, Block 243, Block 244, Block 246B, Block 247A, Block 247C, Block 248, Block 249, Block 250A, Block 250B, Block 251A, Block 251B, Block 252, Block 253, Block 254C, Block 256B, Block 257B, Block 258B, Block 259; Tract 9804: Block Group 4: Block 408B, Block 409B, Block 410, Block 411, Block 416B, Block 417, Block 418B, Block 419B, Block 420C, Block 425B, Block 484, Block 485.

District 5: Pender County: Canetuck *, Caswell *, Columbia *, Grady *; Tract 9805: Block Group 4: Block 455, Block 456, Block 457, Block 462, Block 463, Block 464, Block 465, Block 466, Block 467, Block 468, Block 469, Block 470, Block 471, Block 472, Block 473, Block 474, Block 475, Block 476, Block 477, Block 478, Block 479, Block 480, Block 481, Block 482, Block 483, Block 484, Block 485, Block 486, Block 487, Block 488, Block 489, Block 490, Block 491, Block 492, Block 493, Block 494, Block 495, Block 496; Tract 9806: Block Group 3: Block 339; Penderlea *, Upper Union *.

(b) The names and boundaries of precincts (voting tabulation districts), tracts, block groups, and blocks specified in this section are as they were legally defined and recognized in the 1990 U.S. Census. Boundaries are as shown on the IVTD Version of the United States Bureau of the Census 1990 TIGER Files."

Sec. 2. This act becomes effective beginning with the 1996 primary and election.

In the General Assembly read three times and ratified this the 8th day of May, 1995.

H.B. 609 **CHAPTER 69**

AN ACT TO ALLOW AN EXEMPTION OF TYRRELL COUNTY FROM THE MINIMUM NUMBER OF HOURS ITS BOARD OF ELECTIONS OFFICE MUST BE OPEN.

Whereas, Tyrrel County has a voting age population of only 2,792; and

Whereas, the National Voter Registration Act of 1993 provides that social service agencies and the DMV register voters during the entire time they are open; and

Whereas, the State's least populous county does not need the board of elections office open 12 hours per week as is required at present, and the expenditure so required is wasteful; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of Chapter 163 of the General Statutes, the board of elections of a county, with the approval of the State Board of Elections, may provide that the number of hours that the office of the county board of elections is open, and the minimum number of hours that the supervisor of elections is compensated, may be reduced to provide a level of service commensurate with the potential demand.

Sec. 2. This act applies to Tyrrell County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1995.

H.B. 611 **CHAPTER 70**

AN ACT TO EXEMPT THE TOWN OF SOUTHERN SHORES FROM CERTAIN STATUTORY REQUIREMENTS IN THE BUILDING OF A TRAINING CENTER FACILITY.

The General Assembly of North Carolina enacts:

Section 1. The Town of Southern Shores may contract for the design and construction of the training center facility affiliated with the Blue Sky Project, which is a project of the Town aimed at reducing the impact of natural disaster through building better new homes and refitting existing ones, without being subject to the requirements of G.S. 143-128, 143-129, 143-131, and 143-132.

Sec. 2. This act is effective upon ratification and expires October 1, 1998.

In the General Assembly read three times and ratified this the 8th day of May, 1995.

H.B. 628 **CHAPTER 71**

AN ACT TO CHANGE THE TIME OF ELECTION OF THE AVERY COUNTY BOARD OF EDUCATION FROM NOVEMBER TO MAY, AND TO PROVIDE THAT THAT BOARD SHALL TAKE OFFICE IN JULY OF THE YEAR OF THEIR ELECTION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 146, Session Laws of 1973, as rewritten by Chapter 105 of the Session Laws of 1991, reads as rewritten:

"Sec. 2. Beginning in ~~1992~~ 1996 and biennially thereafter, the election for members of the Avery County Board of Education shall be held at the same time as the ~~general election~~ regular primary for county officers, and shall be conducted on a nonpartisan plurality basis, with the results determined in accordance with G.S. 163-292. Candidates shall file notice of candidacy ~~not earlier than 12:00 noon on the first Friday in July, and not later than 12:00 noon on the first Friday in August,~~ at the same time as candidates for county office under G.S. 163-106."

Sec. 2. (a) Notwithstanding Sections 4 and 5 of Chapter 146, Session Laws of 1973, beginning in 1996 terms of office of the members of the Avery County Board of Education commence on the first Monday in July of the year of their election, except if that date is the Fourth of July, then the terms commence on the second Monday in July.

(b) Terms of office of members of the Avery County Board of Education elected in 1992 and 1994 shall expire on the date set by subsection (a) of this section for their successors to take office.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1995.

H.B. 7 **CHAPTER 72**

AN ACT TO CLARIFY THE STATUTES SO AS TO STREAMLINE THE OPERATIONS OF THE STATE EDUCATION AGENCY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-19 reads as rewritten:

"*§ 115C-19. Chief administrative officer of the State Board of Education.*

As provided in Article IX, Sec. 4(2) of the North Carolina Constitution, the Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education. ~~The Superintendent of Public Instruction shall administer the policies adopted by the State Board of Education.~~ As secretary and chief administrative officer of the State Board of Education, the Superintendent manages on a day-to-day basis the administration of the free public school system, subject to the direction, control, and approval of the State Board. Subject to the direction, control, and approval of the State Board of Education, the Superintendent of Public Instruction shall carry out the duties prescribed under G.S. 115C-21."

Sec. 2. G.S. 115C-21 reads as rewritten:

"*§ 115C-21. Powers and duties generally.*

(a) Administrative Duties. -- ~~It~~ Subject to the direction, control, and approval of the State Board of Education, it shall be the duty of the Superintendent of Public Instruction:

(1) To organize and establish a Department of Public Instruction which shall include such divisions and departments as ~~are~~ the State Board considers necessary for supervision and administration of the public school ~~system, to administer the funds for the operation of the Department of Public Instruction, and to enter into contracts for the operations of the Department of Public Instruction.~~ system. All appointments of administrative and supervisory personnel to the staff of the Department of Public Instruction are subject to the approval of the State Board of Education, which may terminate these appointments for cause in conformity with Chapter 126 of the General Statutes, the State Personnel System.

(2) To keep the public informed as to the problems and needs of the public schools by constant contact with all school administrators and teachers, by ~~his~~ personal appearance at public gatherings, and by information furnished to the press of the State.

(3) To report biennially to the Governor 30 days prior to each regular session of the General Assembly, such report to include information and statistics of the public schools, with recommendations for their improvement and for ~~such changes in the school law as shall occur to him,~~ changes in the school law.

(4) To have printed and distributed such educational bulletins as ~~he shall deem~~ are necessary for the professional improvement of teachers and for the cultivation of public sentiment for public

education, and to have printed all forms necessary and proper for the administration of the Department of Public Instruction.

(5) To ~~have under his direction, in his capacity as the constitutional head of the public school system,~~ manage all those matters relating to the supervision and administration of the public school ~~system.~~ system that the State Board delegates to the Superintendent of Public Instruction.

(6) To create a special fund within the Department of Public Instruction to manage funds received as grants from nongovernmental sources in support of public education. ~~The Superintendent may accept grants and gifts from corporations and other sources made in support of public education and may hold and disburse such funds, in accordance with the purposes, conditions, and limitations associated with such grants and gifts. Any special fund created pursuant to this subdivision shall be subject to audit by the State Auditor.~~ Effective July 1, 1995, this special fund is transferred to the State Board of Education and shall be administered by the State Board in accordance with G.S. 115C-410.

~~(7) To have solely under his direction and control all matters relating to provision of staff services and support to the State Board of Education, including implementation of federal programs on behalf of the State Board of Education, except as otherwise provided in the Current Operations Appropriations Act.~~

(b) Duties as Secretary to the State Board of Education. -- ~~As secretary, under the direction of the Board,~~ Subject to the direction, control, and approval of the State Board of Education, it shall be the duty of the Superintendent of Public Instruction:

(1) To administer through the Department of Public Instruction, ~~all~~ the instructional policies established by the Board.

~~(1a) To administer the funds appropriated for the operations of the State Board of Education and for aid to local school administrative units.~~

(2) To keep the Board informed regarding developments in the field of public education.

(3) To make recommendations to the Board with regard to the problems and needs of education in North Carolina.

(4) To make available to the public schools a continuous program of comprehensive supervisory services.

(5) To collect and organize information regarding the public schools, on the basis of which he shall furnish the Board such tabulations and reports as may be required by the Board.

(6) To communicate to the public school administrators all information and instructions regarding instructional policies and procedures adopted by the Board.

(7) To have custody of the official seal of the Board and to attest all deeds, leases, or written contracts executed in the name of the Board. All deeds of conveyance, leases, and contracts affecting real estate, title to which is held by the Board, and all contracts

of the Board required to be in writing and under seal, shall be executed in the name of the Board by the chairman and attested by the secretary; and proof of the execution, if required or desired, may be had as provided by law for the proof of corporate instruments.

(8) To attend all meetings of the Board and to keep the minutes of the proceedings of the Board in a well-bound and suitable book, which minutes shall be approved by the Board prior to its adjournment; and, as soon thereafter as possible, to furnish to each member of the Board a copy of said minutes.

(9) To perform such other duties as the Board may assign to him from time to time."

Sec. 3. Article 5 of Chapter 143A of the General Statutes is amended by adding three new sections to read:

"*§ 143A-39. Creation.*

There is hereby created a Department of Public Instruction. The head of the Department of Public Instruction is the State Board of Education. Any provision of G.S. 143A-9 to the contrary notwithstanding, the appointment of the State Board of Education shall be as prescribed in Article IV, Section 4(1) of the Constitution.

"*§ 143A-40. State Board of Education; transfer of powers and duties to State Board.*

The State Board of Education shall have all powers and duties conferred on the Board by this Article, delegated to the Board by the Governor, and conferred by the Constitution and laws of this State.

"*§ 143A-42. Superintendent of Public Instruction; creation; transfer of powers and duties.*

The office of the Superintendent of Public Instruction, as provided for by Article III, Section 7 of the Constitution, and the Department of Public Instruction are transferred to the Department of Public Instruction. The Superintendent of Public Instruction shall be the Secretary and Chief Administrative Officer of the State Board of Education, and shall have all powers and duties conferred by the Constitution, by the State Board of Education, Chapter 115C of the General Statutes, and the laws of this State."

Sec. 4. The State Board of Education shall review all State laws and policies governing the public school system to ensure their compliance with the intent of this act to restore constitutional authority to the State Board. The Board shall complete this review and make any recommendations for additional statutory changes to the General Assembly by June 1, 1995.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of May, 1995.

H.B. 214 **CHAPTER 73**

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF TARBORO.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Tarboro is revised and consolidated to read:

"THE CHARTER OF THE TOWN OF TARBORO.

"ARTICLE I. INCORPORATION, CORPORATE POWERS AND BOUNDARIES.

"Section 1.1. *Incorporation.* The Town of Tarboro, North Carolina in Edgecombe County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'Town of Tarboro', hereinafter at times referred to as the 'Town'.

"Sec. 1.2. *Powers.* The Town shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Town of Tarboro specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Sec. 1.3. *Corporate Limits.* The corporate limits shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current municipal boundaries and the boundaries of the wards therein, shall be maintained permanently in the office of the Town Clerk and shall be available for public inspection. Upon alteration of the corporate limits or wards pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the office of the Secretary of State, the Edgecombe County Register of Deeds and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Sec. 2.1. *Town Governing Body; Composition.* The Mayor and the Town Council, hereinafter referred to as the 'Council', shall be the governing body of the Town.

"Sec. 2.2. *Town Council; Composition; Terms of Office.* The Council shall be composed of eight members, one to be elected by and from the qualified voters of each ward, for staggered terms of four years or until their successors are elected and qualified.

"Sec. 2.3. *Mayor; Term of Office; Duties.* The Mayor shall be elected by all the qualified voters of the Town for a term of four years or until his successor is elected and qualified. The Mayor shall be the official head of the Town government and preside at meetings of the Council, shall have the right to vote only when there is an equal division on any question or matter before the Council, and shall exercise the powers and duties conferred by law or as directed by the Council.

"Sec. 2.4. *Mayor Pro Tempore.* The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during his absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the Council.

"Sec. 2.5. *Meetings; Quorum.* In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law. The quorum provisions of G.S. 160A-74 apply.

"Sec. 2.6. *Compensation; Qualifications for Office; Vacancies.* The compensation and qualifications of the Mayor and Council members shall be in accordance with general law. Vacancies that occur in any elective office of the Town shall be filled by majority vote of the remaining members of the Council and shall be filled for the remainder of the unexpired term, despite the contrary provisions of G.S. 160A-63.

"Sec. 2.7. *Voting; Ordinances and Resolutions.* Official actions of the Council and all votes shall be taken in accordance with the applicable provisions of general law, particularly G.S. 160A-75. The yeas and nays shall be taken upon all bond, budget, and franchise ordinances and entered upon the minutes of the Council, and shall likewise be taken and entered on other matters if called for by the Mayor or any two members of the Town Council.

"ARTICLE III. ELECTIONS.

"Sec. 3.1. *Regular Municipal Elections.* Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Sec. 3.2. *Ward Boundaries.* The Town shall be divided into eight wards. The ward boundaries are those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with general law. Notwithstanding the contrary provision of G.S. 160A-59, in the event any member of the Town Council shall be domiciled in a different ward as a result of the adjustment, alteration, or revision of ward boundaries, he shall continue as a member from the ward he was elected to represent until the expiration of the term for which he was elected.

"Sec. 3.3. *Election of Mayor.* A Mayor shall be elected in the regular municipal election in 1997 and each four years thereafter.

"Sec. 3.4. *Election of Council Members.* In the regular municipal election in 1995, a Council member shall be elected by and from each of the Second, Fourth, Sixth, and Eighth Wards. In the regular municipal election in 1997, a Council member shall be elected by and from each of the First, Third, Fifth, and Seventh Wards. Four Council members shall be elected in each regular municipal election thereafter, as the respective terms expire.

"Sec. 3.5. *Special Elections and Referendums.* Special elections and referendums may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. TOWN MANAGER.

"Sec. 4.1. *Form of Government.* The Town shall operate under the council-manager form of government, in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 4.2. *Town Manager; Appointment; Powers and Duties.* The Council shall appoint a Town Manager who shall be responsible for the administration of all departments of the Town government. The Town Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the

additional powers and duties conferred by the Council, so far as authorized by general law.

"Sec. 4.3. *Residency.* At the time of his appointment, the Town Manager need not be a resident of the Town, but shall reside therein during his tenure of office.

"Sec. 4.4. *Eligibility of Elected Officials.* No person elected as Mayor or as a member of the Town Council shall be eligible for appointment as Town Manager until one year shall have elapsed following the expiration of the term for which he was elected.

"Sec. 4.5. *Absence or Disability.* In case of the absence or disability of the Town Manager, the Council may designate a qualified administrative officer of the Town to perform the duties of the Town Manager during such absence or disability.

"Sec. 4.6. *Settlement of Claims by Town Manager.* The Council may authorize the Town Manager to settle claims against the Town for (i) personal injuries or damages to property when the amount involved does not exceed the sum of two thousand five hundred dollars ($2,500) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expenses actually incurred; and (ii) the taking of small portions of private property which are needed for the rounding of corners at intersections of streets, when the amount involved in any such settlement does not exceed two thousand five hundred dollars ($2,500) and does not exceed the actual loss sustained. Settlement of a claim by the Town Manager pursuant to this section shall constitute a complete release of the Town from any and all damages sustained by the person involved in such settlement in any manner arising out of the incident, occasion, or taking complained of. All such settlements and all such releases shall be approved in advance by the Town Attorney.

"ARTICLE V. ADMINISTRATIVE OFFICERS AND EMPLOYEES.

"Sec. 5.1. *Town Attorney.* The Town Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties required by law or as the Council may direct. The Council may appoint one or more Assistant Town Attorneys to assist the Town Attorney and serve in his absence or incapacity and who shall have the same qualifications and duties as the Town Attorney.

"Sec. 5.2. *Town Clerk.* The Town Manager shall appoint a Town Clerk to keep a journal of the proceedings of the Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Town Manager may direct. The Town Manager may appoint an Assistant Town Clerk.

"Sec. 5.3. *Tax Collector.* The Town shall have a Tax Collector to collect all taxes owed to the Town and perform those duties specified in G.S. 105-350 and such other duties as prescribed by law or assigned by the Town Manager. Notwithstanding the contrary provisions of G.S. 105-349, the Town Manager is authorized to appoint and remove the Tax Collector and one or more Deputy Tax Collectors.

"Sec. 5.4. *Finance Director.* The Town Manager shall appoint a Finance Director to perform the duties designated in G.S. 159-25 and such other duties as may be prescribed by law or assigned by the Town Manager.

"Sec. 5.5. *Treasurer.* The Town Manager may appoint a Town Treasurer who shall be the custodian of all moneys of the Town and shall keep and preserve the same in such place or places as shall be determined by the Town Council. He shall countersign all vouchers issued by the Finance Director and shall pay out money only on such vouchers. In addition, he shall perform all other duties as may be prescribed by law or assigned by the Town Manager. The Town Manager may appoint an Assistant Treasurer.

"Sec. 5.6. *Consolidation of Functions.* The Town Manager may, with the approval of the Town Council, consolidate any two or more of the positions of Town Clerk, Finance Director, Treasurer, and Tax Collector, or may assign the functions of any one or more of these positions to the holder or holders of any other of these positions. The Town Manager may also, with the approval of the Town Council, appoint a single employee to perform all or any part of the functions of any of the named positions, in lieu of appointing several persons to perform the same. However, the positions of Finance Director and Treasurer may not be held by the same person.

"Sec. 5.7. *Other Administrative Officers and Employees.* The Council may authorize other positions to be filled by appointment by the Town Manager, and may organize the Town government as deemed appropriate, subject to the requirements of general law.

"Sec. 5.8. *Manager's Authority; Role of Elected Officials.* As chief administrator, the Town Manager shall have the power to appoint and remove all officers, department heads and employees of the Town, except the Town Attorney and any Assistant Town Attorneys, who shall be appointed as provided in Section 5.1 of this Charter. Neither the Mayor not the Town Council nor any of its committees or members shall direct or request the Town Manager to appoint any person to office or remove any person from office, or in any manner take part in the appointment or removal of officers and employees in the administrative service of the Town. Except for the purpose of inquiry, and except in the event of emergency, the Mayor and the Town Council and its members shall deal with officers and employees in the administrative service only through the Town Manager, and neither the Mayor nor the Council nor any of its members shall give orders or directions to any subordinate of the Town Manager, either publicly or privately.

"ARTICLE VI. STREET IMPROVEMENTS.

"Sec. 6.1. *Assessments for Street Improvements; Petition Unnecessary.* In addition to any authority granted by general law, the Council may, without the necessity of a petition, order street improvements and assess the costs thereof against abutting property, exclusive of the costs incurred at street intersections, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes, upon the following findings of fact:

(a) The street improvement project does not exceed 3,000 linear feet; and

(b) (1) The street or part thereof is unsafe for vehicular traffic or creates a safety or health hazard, and it is in the public interest to make such improvement; or

(2) It is in the public interest to connect two streets, or portions of a street already improved; or

(3) It is in the public interest to widen a street, or part thereof, which is already improved; provided, that assessments for widening any street or portion of a street without a petition shall be limited to the cost of widening and otherwise improving such street in accordance with street classification and improvement standards established by the Town's thoroughfare or major street plan for the particular street or part thereof.

"Sec. 6.2. *Street Improvement Defined.* For the purposes of this Article, the term 'street improvement' shall include excavation, grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curbs, gutters, and street drainage facilities; including legal and engineering fees, charges, and costs.

"Sec. 6.3. *Procedure; Effect of Assessment.* In ordering street improvements without a petition and assessing the costs thereof under authority of this Article, the Council shall comply with the procedures provided by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to petitions of property owners and the sufficiency thereof. The effect of the act of levying assessments under authority of this Article shall be the same as if the assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes.

"ARTICLE VII. SIDEWALKS.

"Sec. 7.1. *Assessments for Sidewalk Improvements; Petition Unnecessary.* In addition to any authority granted by general law, the council may, without the necessity of a petition, order sidewalk improvements or repairs according to standards and specifications of the Town, and assess the total costs thereof against abutting property, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes; provided, however, that regardless of the assessment basis or bases employed, the Council may order the costs of sidewalk improvements made only on one side of a street to be assessed against property abutting both sides of such street. In ordering sidewalk improvements or repairs without a petition and assessing the costs thereof under authority of this Article, the Council shall comply with the procedures provided by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to petitions of property owners and the sufficiency thereof. The effect of levying assessments under authority of this Article shall be the same as if the assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes.

"Sec. 7.2. *Property Owner's Responsibility.* It shall be the duty of every property owner in the Town to maintain in good repair and to keep clean and free of debris, trash, and other obstacles or impediments the sidewalks abutting his property.

"Sec. 7.3. *Town Cleaning or Repair; Costs Become Lien.* The Town Council may by ordinance establish a procedure whereby Town forces may repair or clean any sidewalk or remove therefrom any debris or trash after failure of the abutting property owner after 10 days' notice to do so. In such event, the cost of such repair or cleaning or removal shall become a lien upon the abutting property equal to the lien for ad valorem taxes and may thereafter be collected either by suit in the name of the Town or by foreclosure of the lien in the same manner and subject to the same rules, regulations, costs, and penalties as provided by law for the foreclosure of the lien on real estate for ad valorem taxes. The authority and procedure of this section shall be supplementary to the authority and procedure of Section 8.1 of this Charter. The Town Council may, in its discretion, proceed under either section in causing sidewalks to be repaired.

"ARTICLE VIII. POLICE.

"Sec. 8.1. *Police Jurisdiction.* The Town police force shall have extraterritorial jurisdiction as provided by G.S. 160A-286; however, such jurisdiction shall not include any area located within the corporate limits of the Town of Princeville.

"ARTICLE IX. FIREFIGHTERS.

"Sec. 9.1. *Firemen's Supplemental Retirement Fund.* The Tarboro Firemen's Supplemental Retirement Fund shall continue as authorized by Chapter 261, Session Laws of 1973, as amended by Chapter 157, Session Laws of 1985, and Chapter 609, Session Laws of 1987, and any subsequent acts.

"ARTICLE X. PROPERTY DISPOSITION.

"Sec. 10.1. *Town Commons.* No sale of any part of the Town Commons lying North of Wilson Street (formerly Saint Joshua Street) shall be valid unless made in pursuance of special powers given hereafter by the General Assembly. No use or occupation of any portion of said Town Commons, by way of easement or otherwise, shall ever give any right by prescription.

"Sec. 10.2. *Disposal of Surplus Personal Property.* The Town may dispose of surplus personal property valued at less than two thousand dollars ($2,000) for any one item or group of items using the procedures authorized in G.S. 160A-266(c)."

Sec. 2. The purpose of this act is to revise the Charter of the Town of Tarboro and to consolidate certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Sec. 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools, or any acts validating official actions, proceedings, contracts, or obligations of any kind.

Sec. 4. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 937, Session Laws of 1959
Chapter 547, Session Laws of 1965
Chapter 531, Session Laws of 1967, except for Section 4

Chapter 845, Session Laws of 1967
Chapter 1164, Session Laws of 1981 (Regular Session 1982)
Chapter 905, Session Laws of 1985 (Regular Session 1986)
Chapter 963, Session Laws of 1985 (Regular Session 1986)
Chapter 730, Session Laws of 1987, Section 2
Chapter 305, Session Laws of 1991.

Sec. 5. The Mayor and Council members serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified. Thereafter those offices shall be filled as provided in Articles II and III of the Charter contained in Section 1 of this act.

Sec. 6. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Sec. 7. All existing ordinances, resolutions, and other provisions of the Town of Tarboro not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Sec. 8. No action or proceeding pending on the effective date of this act by or against the Town or any of its departments or agencies shall be abated or otherwise affected by this act.

Sec. 9. If any provision of this act or application thereof is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 10. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended general statute, or to the general statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of May, 1995.

S.B. 264 **CHAPTER 74**

AN ACT TO REVIVE THE CHARTER OF THE TOWN OF BETHANIA.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Bethania, being Chapter 65 of the Private Laws of 1839, reads as rewritten:

"Section I. The government of the Town of Bethania, in ~~Stokes county,~~ Forsyth County shall be vested in the following persons and their successors, viz: ~~George J. Wilson, Solomon Transou, Peter Transou, Elias Shaub, and J. G.~~ Deborah Thompson, B.A. Byrd, Seth B. Brown, G. Wayne Purgason, and Willa Lash, and said Commissioners and their successors in office, ~~appointed~~ elected agreeably to this Act, shall be, and they are hereby incorporated into a body corporate and politic, by the name of the Board of Commissioners for the Town of Bethania, and by such name, shall have succession and a common seal, sue and be sued, and by such name, shall have power, from time to time, and at all times hereafter,

to adopt such rules and regulations, and pass such bye-laws and ordinances, as to ~~them or~~ a majority of them, may be deemed necessary for the good government of said Town; and such rules, regulations, bye-laws and ordinances, so passed, shall be as binding as if they were here specially enacted, provided they are authorized by general law or by this act, and are not inconsistent with the Constitution of the United States, or of this ~~State, and provided that the inhabitants of said Town shall, in full Town meeting, approve of this Act of Incorporation.~~ State.

Sec. II. Be it further enacted, That if, at any time hereafter, any of the ~~persons appointed~~ Commissioners ~~by this Act~~ shall refuse to act, or shall die, or remove out of said Town, or otherwise be incapable of acting, the remaining Commissioners shall fill up such vacancy ~~by selecting or appointing some other fit person,~~ in accordance with G.S. 160A-63, which Commissioner, so selected or appointed, shall have the same power, and be under like restrictions, as those in whose stead they were appointed.

Sec. III. Be it further enacted, That said Board of Commissioners shall have power to appoint ~~a Town Constable and Treasurer, and~~ such other Officers as ~~they may deem necessary; and the Constable, so appointed, shall have power to collect all taxes, fines and forfeitures, arising by virtue of this Act, in the same form and manner as in ordinary cases by warrant before any Justice of the Peace for said county, and he shall be allowed the same fees,~~ required or authorized by law.

Sec. IV. Be it further enacted, That said Board of Commissioners be, and they are hereby authorized and empowered to lay and collect such taxes on ~~Town~~ property, in accordance with Chapters 105, 159, and 160A of the General Statutes, not exceeding fifty cents on each hundred dollars valuation of ~~real estate~~ property in said Town, ~~and twenty cents on every taxable poll,~~ as ~~they shall deem necessary for the repair of the streets, and~~ provided by law for the good of the Corporation.

Sec. V. Be it further enacted, That all fines and penalties incurred by virtue of this Act, or by any of said bye-laws, shall be recoverable ~~before any Justice of the Peace for the county of Stokes: Provided, nevertheless, that the right of appeal shall be preserved to either party, as is now by law established in trial before a Justice,~~ as provided by law.

Sec. VI. And be it further enacted, That this Act shall be in force from and after the ratification thereof.

Sec. VII. (a) Until changed in accordance with law, the corporate limits of the Town are:

Beginning at a point in state road 1794 (also known as High Cliffs Road) where said road crosses a branch tributary to Muddy Creek 300 feet more or less west of its intersection with the Bethania-Tobaccoville Road; thence, southwardly with said Branch until it joins Muddy Creek;

Thence with the course of Muddy Creek as it meanders southward until it reaches the Bethania-Tobaccoville Road (state road 1611); thence leaving Muddy Creek and continuing in a southerly direction along the west property line of Thomas E. and Lawena Yarbrough (Deed Book 1358, page 58) to a point, Ramey, Inc.'s line; thence, southwardly along Ramey, Inc.'s south line (Deed Book 1452, page 18; Deed Book 1470, page 1637) until it reaches the north margin of Reynolda Road (Highway 67); thence, with the

north margin of Reynolda Road 455 feet more or less in an easterly direction until it reached Muddy Creek;

Thence; with Muddy Creek in a northeasterly direction 635 feet more or less until it joins another branch or creek entering Muddy Creek from the east, said branch or creek being called Picnic Spring Creek;

Thence, following said branch or creek in an easterly direction to its intersection with Bethania Road (State Road 1688); thence, continuing along said creek in a northeasterly direction until it reaches the western line of K & W Restaurant, Inc. (Deed Book 568, page 424;

Thence, with the western line of K & W Restaurant, Inc., James G. Teta (Deed Book 1379, page 189, and Vivian C. Allred (Deed Book 1585, page 334), 1,626 feet more or less until it reaches a creek or branch known as Bear Creek at the approximate line of A. W. Beroth, Jr. (Deed Book 1671, page 1268); thence northeast along Bear Creek 220 feet more or less to the southeast corner of A. W. Beroth, Jr.; thence, along Beroth's eastern line in a northerly direction 344 feet more or less to a point, the corner of A. W. Beroth, Jr., Edwin T. Beroth (Deed Book 1637, page 2016), and Vivian C. Allred; thence, with Allred's northern and western lines in a northeasterly direction 1,146.43 feet more or less to a point, a common corner of three tracts of land owned by Allred; thence, continuing in a northeasterly direction along a line dividing two tract of land owned by Allred, being also the boundary between the Forest Hills and Old Richmond Fire Districts, 612.96 feet to a point Allred's northern line, also the south or rear lot line of three lots facing on Walker Road; thence, along Allred's northern line, west 410 feet more or less to a point; thence, with Allred's eastern line in a northerly direction to the south margin of Walker Road; thence, with the south margin of Walker Road in a westerly direction, 80 feet to a point, Allred's west corner on Walker Road; thence, with Allred's western and northern lines, in a southwesterly direction 485 feet, more or less to a point at the rear lot line of the residential lots fronting on the east side of the Bethania-Rural Hall Road (SR 4002, old Highway 65);

Thence, continuing along the east, or rear, lot lines of those lots fronting on the east side of the Bethania - Rural Hall Road crossing Walker Road, Lash Road, and Bailey Forest Court to a point, the terminus of said lots 421 feet more or less north of Bailey Forest Court;

Thence, with the north line of the last of said lots westwardly, crossing the Bethania - Rural Hall Road and continuing with that line to the western, rear line of those lots facing Bethania - Rural Hall Road on the west; thence, with the west line of those lots facing the Bethania - Rural Hall Road on the west in a southerly direction crossing Lash Road to a point in the lands of John F. Butner, Jr.

Thence, with Butner's north line (Deed Book 751, page 132) west to a point. Butner's northwest corner; thence with Butner's west line (Deed Book 751, page 132; Deed Book 951, page 456) south until it intersects the land of David T. Drage et ux (Deed Book 872, page 176); thence with Drage's north line and the north line of Charles E. Wolfe et ux (Deed Book 880, page 491) west to the terminus of an old Alley approximately 150 east of the Bethania - Tobaccoville Road;

Thence, along the east, or rear, lines of those lots facing the Bethania-Tobaccoville Road on the east, in a northerly direction crossing Meredith Road and continuing across Amelia Road to a point 170 feet more or less north of Amelia Road; the northeast corner of the lot at the northeast intersection of Amelia Road and Bethania-Tobaccoville Road;

Thence; along the north line of said lot in a westerly direction 200 feet more or less to the east margin of the Bethania - Tobaccoville Road; thence, with the east margin of said road northward to its intersection with High Cliffs Road: thence, in a westerly direction on the south margin of High Cliffs Road to the point and place of beginning. In addition to the above described area, Tax Blocks 5038 and 4986 of Forsyth County are also included in the corporate limits of the Town.

(b) The description in subsection (a) of this section is in lieu of the area of the town under this act as originally enacted in 1839, and any area included in the original town boundaries but not in those described in subsection (a) of this section is removed from the corporate limits.

(c) Notwithstanding Parts 1 through 5 of Article 4A of Chapter 160A of the General Statutes, only areas described as subject to annexation by the Town of Bethania in an annexation agreement between the City of Winston-Salem and the Town of Bethania under Part 6 of that Article may be annexed by the Town of Bethania. Annexation of any areas so designated, however, must be done in accordance with Parts 1 through 5 of that Article, as applicable.

(d) The corporate limits of the Town of Bethania shall also be considered the primary corporate limits of the City of Winston-Salem for the purposes of Parts 1, 3, and 4 of Article 4A of Chapter 160A of the General Statutes.

Sec. VIII. The qualified voters of the Town shall elect the board of commissioners. The mayor shall be selected by the board of commissioners from among its membership to serve at its pleasure during that person's continuance as a member of the board of commissioners.

Sec. IX. In 1995, five members of the Board of Commissioners shall be elected. The three persons receiving the highest number of votes shall be elected for four-year terms, and the two persons receiving the next highest number of votes shall be elected for two-year terms. In 1997 and quadrennially thereafter, two members of the Board of Commissioners shall be elected for four-year terms. In 1999 and quadrennially thereafter, three members of the Board of Commissioners shall be elected for four-year terms.

Sec. X. The Town officers shall be elected on a nonpartisan basis and the results determined by the plurality method as provided by G.S. 163-292.

Sec. XI. The mayor has the right to vote on all matters before the board of commissioners, but may not break a tie vote if the mayor participated in the vote."

Sec. 2. (a) From and after the effective date of this act, the citizens and property in the Town of Bethania shall be subject to municipal taxes levied for the year beginning July 1, 1995, and for that purpose the Town shall obtain from Forsyth County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1995; and the

businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance.

(b) If the effective date of this act is before July 1, 1995, the Town may adopt a budget ordinance for fiscal year 1994-95 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical, and no ad valorem taxes may be levied for the 1994-95 fiscal year. The Town may adopt a budget ordinance for fiscal year 1995-96 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1995-96, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1995.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of May, 1995.

H.B. 128 **CHAPTER 75**

AN ACT TO PERMIT THE CITY OF HENDERSON AND THE CITY OF ASHEVILLE TO USE WHEEL LOCKS ON CERTAIN ILLEGALLY PARKED VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. The City Council of the City of Henderson and the City Council of the City of Asheville may provide, by ordinance, for the use of wheel locks on illegally parked vehicles for which there are three or more outstanding, unpaid, and overdue parking tickets for a period of 90 days. The ordinance shall provide for notice or warning to be affixed to the vehicle, immobilization, towing, impoundment, appeal hearing, an immobilization fee not to exceed twenty-five dollars ($25.00), and charges for towing and storage. The City of Henderson and the City of Asheville shall not be responsible for any damage to an immobilized illegally parked vehicle resulting from unauthorized attempts to free or move that vehicle.

Sec. 2. This act applies to the City of Henderson and the City of Asheville only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of May, 1995.

H.B. 508 **CHAPTER 76**

AN ACT TO CHANGE THE NONPARTISAN ELECTION OF THE TRANSYLVANIA COUNTY BOARD OF EDUCATION FROM THE DATE OF THE PRIMARY TO THE DATE OF THE GENERAL ELECTION.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 157, Session Laws of 1975, as amended by Section 1 of Chapter 102, Session Laws of 1993, reads as rewritten:

"Section 1. The Board of Education of Transylvania County shall consist of five members who shall be elected in ~~accordance with G.S. 115C-37,~~ a nonpartisan election. The election shall be held and conducted in accordance with the general laws governing elections for county officers, except as otherwise provided herein. The election shall be held on the date of the county general election, with the results determined on a plurality basis in accordance with G.S. 163-292. Notices of candidacy shall be filed not earlier than 12:00 noon on the first Monday in June, and not later than 12:00 noon on the last Friday in June.

As the terms of the present members expire, beginning with the primary and election to be held in 1976, and every two years thereafter, members of the Board of Education shall be elected for terms of four years."

Sec. 2. This act applies beginning with the 1996 election.

Sec. 3. This act applies to Transylvania County only.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of May, 1995.

H.B. 662 **CHAPTER 77**

AN ACT TO CHANGE THE MANNER OF ELECTION OF THE MARTIN COUNTY BOARD OF EDUCATION FROM NONPARTISAN ELECTION AT THE TIME OF THE PRIMARY TO NONPARTISAN ELECTION AT THE TIME OF THE GENERAL ELECTION.

The General Assembly of North Carolina enacts:

Section 1. Section 1.1 of Chapter 549 of the Session Laws of 1987 reads as rewritten:

"Sec. 1.1. Beginning with the 1988 regularly scheduled election for county boards of education, the Martin County Board of Education shall be elected from the seven districts described in Section 4 of this act. Only voters who reside in a district may vote in the election for that district. Notwithstanding the provisions of G.S. 115C-37, beginning in 1996 the Martin County Board of Education shall be elected on a nonpartisan basis at the time set by G.S. 163-1 for the general election in each even-numbered year as terms expire. The election shall be conducted on a nonpartisan plurality basis, with the results determined in accordance with G.S. 163-292. Candidates shall file notices of candidacy not earlier than noon on the first Monday in June and not later than noon on the last Friday in July. The names of the candidates shall be printed on the ballot without reference to any party affiliations. Except as provided by this act, the election shall be conducted in accordance with the applicable provisions of Chapters 115C and 163 of the General Statutes."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of May, 1995.

H.B. 679 **CHAPTER 78**

AN ACT AMENDING THE STATUTORY DEFINITION OF SUBDIVISION IN DAVIE COUNTY.

Section 1. G.S. 153A-335 reads as rewritten:

"§ *153A-335. 'Subdivision' defined.*

For purposes of this Part, 'subdivision' means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;

(2) The division of land into parcels greater than ~~10 acres if no street right-of-way dedication is involved;~~ five acres where the grantor or developer records a right-of-way agreement prior to or simultaneously with the recording of the deed, which said agreement provides for access to the parcel by right-of-way at least 50 feet in width and contains an agreement for construction and maintenance of the road;

(3) The public acquisition by purchase of strips of land for widening or opening streets; and

(4) The division of ~~a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations.~~ land pursuant to an order of the General Court of Justice;

(5) The conveyance of a lot or tract for the purpose of dividing land among persons related within the third degree of lineal kinship if the resultant lots are equal to or exceed the standards of the county as shown in its ordinances and regulations; and

(6) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations."

Sec. 2. This act applies to Davie County only.

Sec. 3. This act is effective upon ratification and shall not have any effect on subdivisions submitted for approval to the Davie County Planning Department prior to that date.

In the General Assembly read three times and ratified this the 11th day of May, 1995.

H.B. 698 **CHAPTER 79**

AN ACT RELATING TO THE DAILY DEPOSIT OF COLLECTIONS AND RECEIPTS BY THE CITY OF GREENSBORO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159-32 reads as rewritten:

"*§ 159-32. Daily deposits.*

Except as otherwise provided by law, all taxes and other moneys collected or received by an officer or employee of a local government or public authority shall be deposited in accordance with this section. Each officer and employee of a local government or public authority whose duty it is to collect or receive any taxes or other moneys shall deposit ~~his~~ the collections and receipts daily. If the governing board gives its approval, deposits shall be required only when the moneys on hand amount to as much as ~~two hundred fifty dollars ($250.00)~~ five hundred dollars ($500.00), but in any event a deposit shall be made on the last business day of the month. All deposits shall be made with the finance officer or in an official depository. Deposits in an official depository shall be immediately reported to the finance officer by means of a duplicate deposit ticket. The finance officer may at any time audit the accounts of any officer or employee collecting or receiving taxes or other moneys, and may prescribe the form and detail of these accounts. The accounts of such an officer or employee shall be audited at least annually."

Sec. 2. This act applies to the City of Greensboro only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of May, 1995.

H.B. 657 **CHAPTER 80**

AN ACT MAKING SUNDRY AMENDMENTS CONCERNING LOCAL GOVERNMENTS IN CHATHAM COUNTY.

The General Assembly of North Carolina enacts:

FOX TRAPPING SEASON

Section 1. (a) Notwithstanding any other provision of law relating to trapping of foxes, there will be open season for taking foxes with traps of the leghold type no larger than one and one-half, with coil spring and with trap chain and at least three swivels set on dry land with solid anchor. No trap larger than number one and one-half coil spring may be used. This season shall be from December 1 to February 15 of each year.

(b) No person shall place traps on the land of another without first obtaining written permission from the landowner or lessee.

(c) There shall be no bag limit for foxes taken during the trapping season established in this section.

(d) The Wildlife Resources Commission shall provide for the sale of foxes taken lawfully pursuant to this section.

(e) This section applies only to Chatham County.

(f) This section becomes effective October 1, 1995.

ALLOW CENTRAL CAROLINA COMMUNITY COLLEGE TO LEASE CERTAIN PROPERTY TO THE CHATHAM COUNTY COUNCIL ON AGING

Sec. 2. (a) Notwithstanding G.S. 115D-15, the Board of Trustees of Central Carolina Community College may lease a portion of its real property in Center Township of Chatham County, and grant necessary easements for utilities, to the Chatham County Council on Aging, Inc., upon such terms and conditions as it shall determine in its discretion.

(b) This section applies only to the proposed lease of property in Chatham County.

CHATHAM SCHOOL BOARD/COUNTY COMMISSIONER ELECTIONS

Sec. 3. (a) The Board of Education of Chatham County shall consist of five members who shall be qualified voters of the County, and who shall be elected as hereinafter provided for staggered terms of four years.

(b) For the purpose of electing members of the Board of Education, the County is hereby divided into four resident districts as follows:

District Number One shall consist of all the territory within the boundaries of the precincts of Bynum, West Williams, East Williams, and New Hope.

District Number Two shall consist of all the territory within the boundaries of the precincts of East Pittsboro, West Pittsboro, West Mann's Chapel, and East Mann's Chapel.

District Number Three shall consist of all the territory within the boundaries of the precincts of Cape Fear, Haw River, Oakland, Goldston, and Harpers Crossroads.

District Number Four shall consist of all the territory within the boundaries of the precincts of Bennett, Bonlee, South Siler City, North Siler City, Albright, Hadley, and Hickory Mountain.

(c) The election shall be nonpartisan, and no primary election shall be held. The election shall be held at the same time as the regular primary for county officers, and except as provided in this section, the election shall be conducted in accordance with the applicable provisions of Chapter 163 of the General Statutes regulating general elections.

(d) Beginning in 1996, and thereafter as the terms expire, one member shall be elected from Districts 1 and 2 for terms of four years.

In 1998, and thereafter as the terms expire, one member shall be elected from District 3, and two members from District 4 for terms of four years.

(e) Candidates must reside in the district which they seek to represent, but shall be voted on by the voters of the entire County. The candidates in each district receiving the highest number of votes, equal to the number of positions to be filled in the district, shall be declared elected.

(f) The provisions of G.S. 115C-37, except for subsection (i), shall be applicable to the members of the Chatham County Board of Education.

(g) Chapter 501 of the Session Laws of 1975 is repealed, except for Section 6.

(h) Article 3 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"*§ 153A-22.1. Redefining residency district boundaries.*

(a) 'Residency district' means a district in which the candidates reside and represent the district, but the candidates are voted on in the primaries and general elections by the qualified voters of the entire county. It includes districts established either by local act or under G.S. 153A-58(3)d.

(b) If a county is divided into residency districts, the board of commissioners may find as a fact whether there is substantial inequality of population among the districts. If the board finds that there is substantial inequality of population among the districts, it may by resolution redefine the residency districts to make them more nearly equal. The test for compliance with this section is a reduction in the relative overall range of deviation.

(c) No change in the boundaries of a residency district may affect the unexpired term of office of a commissioner residing in the district and serving on the board on the effective date of the resolution. If the terms of office of members of the board do not all expire at the same time, the resolution shall state which seats are to be filled at the initial election held under the resolution.

(d) A resolution adopted pursuant to this section shall be the basis of electing persons to the board of commissioners at the first general election for members of the board of commissioners occurring after the resolution's effective date, and thereafter. Before any resolution may be adopted pursuant to this section, the board of commissioners shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two successive weeks in a newspaper having general circulation in the county. The notice shall be published for the first time not less than 10 days nor more than 20 days before the date fixed for hearing. In computing the period of time, the day of publication shall not be included but the day of the hearing shall be included. A resolution becomes effective upon its adoption, unless it is adopted during the period beginning 150 days before the day of a primary and ending on the day of the next succeeding general election for membership on the board of commissioners, in which case it becomes effective on the first day after the end of the period.

(e) Not later than 10 days after the day on which a resolution becomes effective, the clerk shall file in the Secretary of State's office, in the office of the register of deeds of the county, and with the chairman of the county board of elections, a certified copy of the resolution.

(f) This section applies to Chatham County only."

CHATHAM SCHOOL BOARD TIME OF TAKING OFFICE

Sec. 4. Section 6 of Chapter 501 of the Session Laws of 1975 reads as rewritten:

"Sec. 6. The provisions of G.S. ~~115-24~~ 115C-37(f) shall be applicable to the members of the Chatham County Board of Education. ~~The persons elected shall qualify by taking the oath of office 30 days after the election.~~ The members of the Chatham County Board of Education shall hold a

meeting on the first Monday in December following the election. At that meeting, newly elected members of the Board of Education shall qualify by taking the oath of office as prescribed in Article VI, Section 7 of the Constitution."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of May, 1995.

H.B. 375 **CHAPTER 81**

AN ACT TO REMOVE THE LIMITATION ON FUNDING FOR THE PER DIEM COSTS OF INMATES HOUSED OUT-OF-STATE.

The General Assembly of North Carolina enacts:

Section 1. Subsection (c) of Section 21.2 of Chapter 769 of the 1993 Session Laws reads as rewritten:

"(c) ~~The Department of Correction shall not use any funds other than those specifically appropriated for out-of-state housing of inmates in Chapter 24 of the Session Laws of the 1994 Extra Session to pay the per diem costs of inmates housed out-of-state.~~ The availability of out-of-state housing funds shall be reduced by (i) the amount needed to fund local confinement costs for offenders held in contempt for probation violations under G.S. 15A-1344(e1); and (ii) the amount required to comply with subsections (a) and (b) of this section. ~~If the Department of Correction projects that funds will not be sufficient to meet all of its contracts for the out-of-state housing of inmates, the Department shall make the most appropriate use of funds remaining in the out-of-state line item to meet any existing operational needs for the out-of-state housing of inmates.~~"

Sec. 2. Of the funds appropriated to the Department of Correction for the 1994-95 fiscal year which are not needed for the purposes for which they were appropriated, the sum of six million five hundred thousand dollars ($6,500,000) shall revert upon ratification of this act. There is appropriated from the General Fund to the Department of Correction the sum of six million five hundred thousand dollars ($6,500,000) for the 1994-95 fiscal year to continue housing inmates in out-of-state facilities through June 30, 1995.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of May, 1995.

H.B. 381 **CHAPTER 82**

AN ACT TO GRANT THE TOWN OF APEX AND THE TOWN OF MOORESVILLE A TEMPORARY EXEMPTION FROM THE TOTAL AMOUNT OF NONCONTIGUOUS TERRITORY THAT MAY BE ANNEXED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ~~ten percent (10%)~~ twenty percent (20%) of the area within the primary corporate limits of the annexing city."

Sec. 2. This act applies only to the Towns of Apex and Mooresville and only with respect to annexation ordinances adopted on or before December 31, 2000. The authority this act grants to the Town of Apex does not apply to property in Chatham County; therefore, the Town of Apex may not annex property in Chatham County by satellite annexation if the area to be annexed, when added to the area within the satellite corporate limits of the Town of Apex, exceeds the limit set by general law in G.S. 160A-58.1(b)(5).

Sec. 3. This act does not affect Section 3 of Chapter 312 of the 1993 Session Laws.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of May, 1995.

H.B. 519 **CHAPTER 83**

AN ACT TO ALLOW THE TRAPPING AND KILLING OF RED WOLVES BY OWNERS OF PRIVATE LAND IN BEAUFORT AND CRAVEN COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 635 of the 1993 Session Laws reads as rewritten:

"Sec. 2. This act applies only to ~~Hyde~~ Beaufort, Craven, Hyde, and Washington Counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of May, 1995.

H.B. 651 **CHAPTER 84**

AN ACT TO ALLOW THE TOWNS OF KILL DEVIL HILLS, KITTY HAWK, NAGS HEAD, AND SOUTHERN SHORES TO REGULATE NOISE IN THE ATLANTIC OCEAN AND OTHER WATERWAYS ADJACENT TO THAT PORTION OF THE TOWNS WITHIN THEIR BOUNDARIES OR WITHIN THEIR EXTRATERRITORIAL JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-184 reads as rewritten:

"*§ 160A-184. Noise regulation.*

(a) A city may by ordinance regulate, restrict, or prohibit the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens.

(b) A city may by ordinance regulate, restrict, or prohibit the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens that are produced or emitted in, on, or from the Atlantic Ocean and other waterways adjacent to that portion of the city within its boundaries or within its extraterritorial jurisdiction."

Sec. 2. This act applies to the Towns of Kill Devil Hills, Kitty Hawk, Nags Head, and Southern Shores only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of May, 1995.

S.B. 118 **CHAPTER 85**

AN ACT TO CLARIFY THAT UNPAID VOLUNTEER MEDICAL DIRECTORS FOR EMERGENCY MEDICAL SERVICES (EMS) AGENCIES ARE COVERED BY THE GOOD SAMARITAN STATUTE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-21.14 reads as rewritten:

"*§ 90-21.14. First aid or emergency treatment; liability limitation.*

(a) Any person, including a volunteer medical or health care provider at a facility of a local health department as defined in G.S. 130A-2 or at a nonprofit community health center or a volunteer member of a rescue squad, who receives no compensation for his services as an emergency medical care provider, who renders first aid or emergency health care treatment to a person who is unconscious, ill or injured,

(1) When the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and

(2) When the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the person,

shall not be liable for damages for injuries alleged to have been sustained by the person or for damages for the death of the person alleged to have occurred by reason of an act or omission in the rendering of the treatment unless it is established that the injuries were or the death was caused by gross negligence, wanton conduct or intentional wrongdoing on the part of the person rendering the treatment.

(a1) (1) Any volunteer medical or health care provider at a facility of a local health department or at a nonprofit community health ~~center; or~~ center;

(2) Any volunteer medical or health care provider rendering services to a patient referred by a local health department as defined in G.S. 130A-2(5) or nonprofit community health center at the provider's place of ~~employment,~~ employment; or

(3) Any volunteer medical or health care provider serving as medical director of an emergency medical services (EMS) agency,

who receives no compensation for medical services or other related services rendered at the ~~facility or center~~ facility, center, or agency or, who neither charges nor receives a fee for medical services rendered to the patient referred by a local health department or nonprofit community health center at the provider's place of employment shall not be liable for damages for injuries or death alleged to have occurred by reason of an act or omission in the rendering of the services unless it is established that the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the person rendering the services. The local health department ~~facility or~~ facility, nonprofit community health ~~center~~ center, or agency shall use due care in the selection of volunteer medical or health care providers, and this subsection shall not excuse the health department ~~facility or~~ facility, community health ~~center~~ center, or agency for the failure of the volunteer medical or health care provider to use ordinary care in the provision of medical services to its patients.

(b) Nothing in this section shall be deemed or construed to relieve any person from liability for damages for injury or death caused by an act or omission on the part of such person while rendering health care services in the normal and ordinary course of his business or profession. Services provided by a volunteer health care provider who receives no compensation for his services and who renders first aid or emergency treatment to members of athletic teams are deemed not to be in the normal and ordinary course of the volunteer health care provider's business or profession. Services provided by a medical or health care provider who receives no compensation for his services and who voluntarily renders such services at facilities of local health departments as defined in G.S. 130A-2 or at a nonprofit community health center, or as a volunteer medical director of an emergency medical services (EMS) agency, are deemed not to be in the normal and ordinary course of the volunteer medical or health care provider's business or profession.

(c) In the event of any conflict between the provisions of this section and those of G.S. 20-166(d), the provisions of G.S. 20-166(d) shall control and continue in full force and effect."

Sec. 2. This act is effective upon ratification and applies to services rendered on or after that date.

In the General Assembly read three times and ratified this the 17th day of May, 1995.

H.B. 204 **CHAPTER 86**

AN ACT TO ENSURE REPRESENTATION OF BOTH FOR-PROFIT AND NONPROFIT INSTITUTIONS ON THE STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-277 reads as rewritten:

"*§ 90-277. Composition of Board.*

There is created the State Board of Examiners for Nursing Home Administrators. The Board shall consist of seven members. The seven members shall be voting members and shall meet the following criteria:

(1) All shall be individuals representative of the professions and institutions concerned with the care and treatment of chronically ill or infirm elderly patients.

(2) Less than a majority of the Board members shall be representative of a single profession or institutional category.

(3) Three of the Board members shall be licensed nursing home administrators, ~~and~~ at least one of whom shall be employed by a for-profit nursing home and at least one of whom shall be employed by a nonprofit nursing home. These three Board members shall be considered as representatives of institutions in construing this section.

(4) Four of the Board members shall be public, noninstitutional members, with no direct financial interest in nursing homes.

(5) The terms of the Board members shall be limited to two consecutive terms.

Effective July 1, 1973, the Governor shall appoint three members, one of whom shall be a licensed nursing home administrator, for terms of three years, and four members, two of whom shall be licensed nursing home administrators, for terms of two years. Thereafter, all terms shall be three years. However, no member shall serve more than two consecutive full terms. Any vacancy occurring in the position of an appointive member shall be filled by the Governor for the unexpired term in the same manner as for new appointments. Appointive members may be removed by the Governor for cause after due notice and hearing.

Any member of the Board shall be automatically removed from the Board upon certification by the Board to the Governor that the member no longer satisfies the criteria set forth in subdivisions (1) through (4) of this section for appointment to the Board."

Sec. 2. This act becomes effective January 1, 1996, and applies to all appointments made on or after that date.

In the General Assembly read three times and ratified this the 17th day of May, 1995.

H.B. 627 **CHAPTER 87**

AN ACT RELATING TO THE EMPLOYMENT PREFERENCE GIVEN BY CATAWBA COUNTY TO VETERANS WHO APPLY FOR COUNTY EMPLOYMENT.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 631 of the 1945 Session Laws reads as rewritten:

"Section 1. The Board of County Commissioners of Catawba County is hereby authorized and empowered to employ a county veterans service officer and pay ~~him~~ the service officer such salary as the board may consider just and fair and to furnish ~~him~~ the service officer the necessary

office space, assistants, supplies, and equipment to enable ~~him~~ the service officer to perform efficiently the duties of ~~his~~ the service officer's employment. In selecting ~~said~~ the service officer and other personnel, preference shall be given to applicants who are eligible veterans ~~of World Wars I and II,~~ as defined by G.S. 128-15(b)(3), in furtherance of the policy of the State that, in appreciation for their service to this State and this country during a period of war, and in recognition of the time and advantage lost toward the pursuit of a civilian career, veterans shall be granted preference in public employment."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of May, 1995.

S.B. 108 **CHAPTER 88**

AN ACT TO PROVIDE THAT ADOPTIONS SHALL BE IN THE DISTRICT COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-272 reads as rewritten:

"*§ 1-272. Appeal from clerk to judge.*

Except for appeals from judgments of the clerk of superior court in adoption proceedings, ~~Appeals~~ appeals lie to the judge of the superior court having jurisdiction, either in session or vacation, from judgments of the clerk of the superior court in all matters of law or legal inference. Appeals from judgments of the clerk of superior court in adoption proceedings lie to the judge of the district court having jurisdiction, either in session or vacation. In case of such transfer or appeal neither party need give an undertaking for costs; and the clerk shall transmit, on the transfer or appeal, to the ~~superior~~ court, or to the judge thereof, the pleadings, or other papers, on which the issues of fact or of law arise. An appeal must be taken within 10 days after the entry of the order or judgment of the clerk upon due notice in writing to be served on the appellee and a copy of which shall be filed with the clerk of the superior court. But an appeal can only be taken by a party aggrieved, who appeared and moved for, or opposed, the order or judgment appealed from, or who, being entitled to be heard thereon, had no opportunity of being heard, which fact may be shown by affidavit or other proof."

Sec. 2. G.S. 1-273 reads as rewritten:

"*§ 1-273. Clerk to transfer issues of fact to civil issue docket.*

(a) Except as provided in subsection (b) of this section, ~~If~~ if issues of law and of fact, or of fact only, are raised before the clerk, ~~he~~ the clerk shall transfer the case to the civil issue docket for trial of the issues at the next ensuing session of the superior court.

(b) If issues of law and of fact, or of fact only, are raised before the clerk in adoption proceedings, then the clerk shall transfer the case to the civil issue docket for trial of the issues at the next ensuing session of the district court."

Sec. 3. G.S. 48-4(a) reads as rewritten:

"(a) Any person over 18 years of age may petition in a special proceeding in the ~~superior~~ district court to adopt a minor child and may also petition for a change of the name of such child. If the petitioner has a husband or wife living, competent to join in the petition, such spouse shall join in the petition."

Sec. 4. G.S. 48-12 is amended by adding the following new subsection to read:

"(d) If the child who is the subject of the adoption is also the subject of a pending district court case or proceeding under Chapter 7A of the General Statutes, then the district court having jurisdiction under Chapter 7A shall retain jurisdiction until the final order of adoption is entered."

Sec. 5. G.S. 48-15(a) reads as rewritten:

"(a) The caption of the petition shall be substantially as follows:

STATE OF NORTH CAROLINA
IN THE ~~SUPERIOR~~ DISTRICT COURT
..... COUNTY
BEFORE THE CLERK

.....
(Full name of adopting father)
and
..... PETITION FOR ADOPTION
(Full name of adopting mother)
FOR THE ADOPTION OF
.....
(Full name of child as used in proceeding)".

Sec. 6. G.S. 48-26 reads as rewritten:

"*§ 48-26. Procedure for opening record for necessary information.*

(a) Any necessary information in the files or the record of an adoption proceeding may be disclosed, to the party requiring it, upon a written motion in the cause before the clerk of original jurisdiction. The movant must serve a copy of the motion, with proof of service, upon the Department of Human Resources, and the county department of social services or the licensed child placing agency which prepared the report in response to the order of reference issued pursuant to G.S. 48-16. The clerk of superior court shall give at least five days' notice to the Department of Human Resources and county department of social services or licensed child placing agency of every hearing on this motion, whether the hearing is before the clerk or a judge of the ~~superior~~ district court, and the Department of Human Resources and the county department of social services or licensed child placing agency shall be entitled to appear and be heard in response to the motion. After hearing, the clerk may issue an order to open the record. Such order must be reviewed by a judge of the ~~superior~~ district court and if, in the opinion of said judge, it be to the best interest of the child or of the public to have such information disclosed, ~~he~~ the judge may approve the order to open the record.

(b) The original order to open the record must be filed with the proceedings in the office of the clerk of the superior court. If the clerk shall refuse to issue such order, the party requesting such order may appeal to the

judge who may order that the record be opened, if, in ~~his~~ the judge's opinion, it be to the best interest of the child or of the public."

Sec. 7. G.S. 7A-246 reads as rewritten:

"*§ 7A-246. Special proceedings: ~~exception;~~ exceptions; guardianship and trust administration.*

The superior court division is the proper division, without regard to the amount in controversy, for the hearing and trial of all special proceedings except proceedings under the Protection of the Abused, Neglected or Exploited Disabled Adult Act (Chapter 108A, Article 6, of the General Statutes), ~~except~~ proceedings for involuntary commitment to treatment facilities (Chapter ~~122,~~ 122C, Article ~~5A,~~ 5, of the General ~~Statutes~~) Statutes), adoption proceedings (Chapter 48 of the General Statutes) and of all proceedings involving the appointment of guardians and the administration by legal guardians and trustees of express trusts of the estates of their wards and beneficiaries, according to the practice and procedure provided by law for the particular proceeding."

Sec. 8. G.S. 7A-251 reads as rewritten:

"*§ 7A-251. Appeal from clerk to judge.*

(a) In all matters properly cognizable in the superior court division which are heard originally before the clerk of superior court, appeals lie to the judge of superior court having jurisdiction from all orders and judgments of the clerk for review in all matters of law or legal inference, in accordance with the procedure provided in Chapter 1 of the General Statutes.

(b) In all matters properly cognizable in the district court division which are heard originally before the clerk of superior court, appeals lie to the judge of district court having jurisdiction from all orders and judgments of the clerk for review in all matters of law or legal inference, in accordance with the procedure provided in Chapter 1 of the General Statutes."

Sec. 9. This act becomes effective October 1, 1995, and applies to adoption petitions filed on or after that date.

In the General Assembly read three times and ratified this the 18th day of May, 1995.

S.B. 245 **CHAPTER 89**

AN ACT TO AUTHORIZE THE OPENING OF EMPTY LOCK BOXES OF DECEDENTS OUTSIDE THE PRESENCE OF THE CLERK OF SUPERIOR COURT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-24 reads as rewritten:

"*§ 105-24. ~~Access to safe deposits of decedents;~~ Tax waiver required for transfer of decedents' property in some cases; inventory of lock boxes; withdrawal of bank deposits, etc., payable to either husband or wife or survivor.*

(a) No safe deposit company, trust company, corporation, bank, or other institution, person or persons having in possession or control or custody, in whole or in part, securities, deposits, assets, or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint

names of decedent and one or more persons, shall deliver or transfer the same to any person whatsoever, whether in a representative capacity or not, or to the survivor or to the survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay taxes or interest assessed under this Article on property transferred by the decedent; but the Secretary of Revenue may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation herein imposed. Securities whose declaration date is after the decedent's death, or interest that accrues after the decedent's death on money on deposit at a bank, savings and loan association, credit union, or other corporation, however, may be transferred or delivered without retaining a portion of the property for the payment of taxes or interest and without obtaining the written consent of the Secretary to the delivery or transfer. Provided: The clerk of superior court of the resident county of a decedent may authorize in writing one or more banks, safe deposit companies, trust companies or any other institutions to transfer to the properly qualified representative of the estate any funds on deposit in the name of the decedent or the decedent and one or more persons when the aggregate amount of all such deposits in all such institutions is two thousand dollars ($2,000) or less, and when such deposit or deposits compose the total cash assets of the estate. Such authorization shall have the same force and effect as when issued in writing by the Secretary of Revenue.

(b) ~~Every~~ Except as provided in subsection (c) of this section, every safe deposit company, trust company, corporation, bank or other institution, person, or persons engaged in the business of renting lock boxes for the safekeeping of valuable papers and personal effects, or having in their possession or supervision in such lock boxes such valuable papers or personal effects shall, upon the death of any person using or having access to such lock box, as a condition precedent to the opening of such lock box by the executor, administrator, personal representative lessee or cotenant of such deceased person, require the presence of the clerk of the superior court of the county in which such lock box is located. It shall be the duty of the clerk of the superior court, or his representative, in the presence of an officer or representative of the safe deposit company, trust company, corporation, bank, or other institution, person or persons, to make an inventory of the contents of such lock box and to furnish a copy of such inventory to the Secretary of Revenue, to the executor, administrator, personal representative, or cotenant of the decedent, and a copy to the safe deposit company, trust company, corporation, bank, or other institution, person, or persons having possession of such lock box; provided, that for lock boxes to which decedent merely had access the inventory shall include only assets in which the decedent has or had an interest. Immediately after the clerk of superior court has made an inventory of the contents of the lock box, the safe deposit company, trust company, corporation, bank or other institution, or person shall, upon request, release to the lessee or cotenant of the lock box any life insurance policy stored in the lock box for delivery to the beneficiary named in the policy. Notwithstanding any of the provisions

of this section any life insurance company may pay the proceeds of any policy upon the life of a decedent to the person entitled thereto as soon as it shall have mailed to the Secretary of Revenue a notice, in such form as the Secretary of Revenue may prescribe, setting forth the fact of such payment; but if such notice be not mailed, all of the provisions of this section shall apply.

(c) Notwithstanding the provisions of subsection (b) of this section, if the properly qualified personal representative of an estate believes upon reliable information that a lock box to which the decedent had access is empty, the personal representative may so certify to the clerk of superior court of the county in which the lock box is located. Upon receipt of this certificate, the clerk may authorize in writing the personal representative or the personal representative's named agent to open the lock box outside of the clerk's presence. The personal representative or the personal representative's agent shall open the lock box in the presence of an officer or representative of the institution having control or custody of the lock box, and the personal representative or the personal representative's agent shall certify to the clerk whether the lock box is or is not empty. The certificate shall include the name of the officer or representative of the institution who was present at the time the lock box was opened and shall be signed by the officer or representative to indicate that he or she was present. If the lock box is empty, no tax waiver will be required from, and no notice given to, the Secretary of Revenue. If the lock box is not empty, the officer or representative of the institution shall close the lock box at once and the lock box may be reopened only in accordance with subsection (b) of this section.

(d) Notwithstanding any of the provisions of this section, in any case where a bank deposit has been heretofore made or is hereafter made, or where savings and loan stock has heretofore been issued or is hereafter issued, in the names of two or more persons and payable to either or the survivor or survivors of them, such bank or savings and loan association may, upon the death of either of such persons, allow the person or persons entitled thereto to withdraw as much as fifty percent (50%) of such deposit or stock, and the balance thereof shall be retained by the bank or savings and loan association to cover any taxes that may thereafter be assessed under this Article. When it is ascertained that there is no liability of such deposit or stock for taxes under this Article, the Secretary of Revenue shall furnish the bank or savings and loan association his written consent for the payment of the retained percentage to the person or persons entitled thereto by law; and the Secretary of Revenue may furnish such written consent to the bank or savings and loan association upon the qualification of a personal representative of the deceased. If the person entitled to funds in an account is the surviving spouse and the account is a joint account of the surviving spouse and the decedent with right of survivorship, no tax waiver is required from the Secretary of Revenue to release the funds in the account.

(e) Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons liable for the amount of the taxes and interest due under this Article on property transferred by the decedent. In any action brought under this provision it shall be a sufficient defense that the delivery or

transfer of securities, deposits, assets, or property was made in good faith without knowledge of the death of the decedent and without knowledge of circumstances sufficient to place the defendant on inquiry."

Sec. 2. This act becomes effective October 1, 1995, and applies to the estates of decedents dying on or after that date.

In the General Assembly read three times and ratified this the 18th day of May, 1995.

S.B. 178 **CHAPTER 90**

AN ACT TO CHANGE THE PAY DATE FOR THE ALLEGHANY SCHOOL ADMINISTRATIVE UNIT.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 115C-302(a), G.S. 115C-316(a), or any other provision of law, all 10-month employees of the Alleghany County Board of Education shall be paid on the tenth day of each month. Nothing in this section shall have the effect of changing the rate of pay for any employee of the Alleghany County Board of Education.

This section shall not be construed to authorize prepayment of any employees by the Alleghany County Board of Education.

Sec. 2. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 22nd day of May, 1995.

S.B. 289 **CHAPTER 91**

AN ACT RELATING TO THE TERMS OF OFFICE OF THE COUNTY COMMISSIONERS OF ASHE COUNTY.

Section 1. At the election of county officers to be held in Ashe County in 1998, and biennially thereafter, three members of the Board of Commissioners of Ashe County shall be elected. The two candidates receiving the highest numbers of votes shall be elected for four-year terms. The candidate receiving the next highest number of votes shall be elected for a two-year term.

Sec. 2. Section 2 of Chapter 325 of the 1967 Session Laws is repealed.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of May, 1995.

S.B. 377 **CHAPTER 92**

AN ACT INCLUDING WITHIN THE DEFINITION OF AN ABANDONED VEHICLE THOSE LEFT ON CERTAIN HIGHWAYS WITHIN THE CITY OF WINSTON-SALEM FOR MORE THAN FORTY-EIGHT HOURS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-303(b)(4) reads as rewritten:

"(4) Is left on any public street or highway for longer than seven ~~days.~~ days, or on:

a. U.S. Highway 52;

b. Interstate Highway 40; or

c. Business Interstate Highway 40,

within the corporate limits of the City of Winston-Salem for longer than 48 hours."

Sec. 2. This act applies to the City of Winston-Salem only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of May, 1995.

S.B. 471 **CHAPTER 93**

AN ACT TO PROVIDE THAT THE BUNCOMBE COUNTY BOARD OF EDUCATION SHALL BE ELECTED ON A NONPARTISAN PLURALITY BASIS ON THE DATE OF THE GENERAL ELECTION.

The General Assembly of North Carolina enacts:

Section 1. Section 1.1 of Chapter 532 of the Session Laws of 1975, as added by Section 2 of Chapter 178 of the 1981 Session Laws, reads as rewritten:

"Sec. 1.1(a) Beginning with the 1982 primary election and biennially ~~thereafter,~~ thereafter through 1994 each candidate elected in the primary election as herein provided for shall be elected for a term of four years. ~~The election shall be held on the date of the primary election as determined by G.S. 163-1(b). The election shall be conducted under the nonpartisan election and runoff election method, and determined by a majority of the votes cast.~~ Notwithstanding the provisions of G.S. 115C-37, the Buncombe County Board of Education shall be elected on a nonpartisan basis at the time of the general election as set by G.S. 163-1 in 1996 and biennially thereafter as terms of office expire. The nonpartisan plurality election method shall be used with the results determined as provided in G.S. 163-292.

~~(b) A majority within the meaning of this section shall be determined as follows:~~

~~When more than one person is seeking election to a single office, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared elected.~~

~~(c) If no candidate for a single office receives a majority of the votes cast, a runoff election shall be held as herein provided:~~

~~If no candidate for a single office receives a majority of the votes cast, a runoff election shall be held unless the candidate receiving the second highest number of votes withdraws under subsection (d) of this section. If such a request is made, then the candidate receiving the highest number of votes shall be declared elected. In the runoff election only the names of the~~

~~two candidates who received the highest and next highest number of votes shall be printed on the ballot.~~

~~(d) The canvass of the first election shall be held on the Thursday after the election. If any candidate is entitled to withdraw under subsection (c) of this section he must do so by filing a written withdrawal with the board of elections no later than 12:00 noon on the Monday after the result of the first election has been officially declared.~~

~~(e) Tie votes; how determined:~~

~~(1) If there is a tie for the highest number of votes in a first election, the board of elections shall conduct a recount and declare the results. If the recount shows a tie vote, a runoff election between the two shall be held unless one of the candidates, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections. Should that be done, the remaining candidate shall be declared elected.~~

~~(2) If one candidate receives the highest number of votes cast in a first election, but short of a majority, and there is a tie between two or more of the other candidates receiving the second highest number of votes, the board of elections shall declare the candidate having the highest number of votes to be elected, unless all but one of the tied candidates give written notice of withdrawal to the board of elections within three days after the result of the first election has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, a runoff election shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote, unless the remaining candidate who received the second highest vote withdraws.~~

~~(f) Runoff elections shall be held on the date fixed in G.S. 163-111(e). The runoff election shall be held under the laws, rules, and regulations provided for the first election.~~

~~(g) A second runoff election shall not be held. The candidates receiving the highest number of votes in a runoff election shall be elected. If in a runoff election there is a tie for the highest number of votes between two candidates, the board of elections shall determine the winner by lot.~~"

Sec. 2. Section 4 of Chapter 532 of the Session Laws of 1975, as amended by Section 3 of Chapter 178 of the Session Laws of 1981 reads as rewritten:

"Sec. 4. The members representing the various districts on the Buncombe County Board of Education shall be residents of these said districts and shall file with the County Board of Elections of Buncombe County a notice of candidacy ~~during the period prescribed by G.S. 163-106(c)~~ not earlier than 12:00 noon on the first Friday in July, and not later than 12:00 noon on the first Friday in August in the year of the election which shall give the candidate's name, address, place of residence and a statement that he desires to be a candidate for membership on the said Buncombe County Board of Education for the district in which he resides. The election of said members of said board of education shall be by

nonpartisan election. The Board of Elections of Buncombe County shall prepare a separate ballot for the election of said members which shall, among other things, contain the name of the candidate, the school district that he desires to represent and shall not contain any reference to party affiliation in any manner or form. ~~The Board of Elections of Buncombe County shall prepare a separate ballot for the nomination and election of said members which shall, among other things, contain the name of the candidate, the school district that he desires to represent and shall not contain any reference to party affiliation in any manner or form.~~ The candidates for membership on the Buncombe County Board of Education shall be voted on at large by the eligible voters resident in the Buncombe County School Administrative Unit, and the Board of Elections of Buncombe County shall canvass and judicially determine the results of said election and declare the members so elected. All persons so elected shall serve until their successors are elected and qualified, and any vacancy occurring on the Buncombe County Board of Education by death, resignation or by change of residency from the district from which any such person was elected, or otherwise shall be filled by the ~~Senior Resident Superior Court Judge of Buncombe County~~ appointment by the remaining members of the Board for the unexpired term, but the person appointed to fill such vacancy must be from the same district as the person whose death, resignation or removal created the vacancy on the said Buncombe County Board of Education, provided that if the vacancy has not been filled within 60 days of its occurrence, and the term has not yet expired, then the vacancy shall be filled by the Senior Resident Superior Court Judge of Buncombe County for the remainder of the unexpired term, but the person appointed to fill such vacancy must be from the same district as the person whose death, resignation, or removal created the vacancy on the said Buncombe County Board of Education."

Sec. 3. Section 5 of Chapter 532 of the Session Laws of 1975, as amended by Section 4 of Chapter 178 of the Session Laws of 1981, reads as rewritten:

"Sec. 5. Persons so elected to the Buncombe County Board of Education pursuant to this act shall take office on the first Monday in ~~July~~ December next following their election. The terms of office of persons elected in 1992 and 1994 are extended to the first Monday in December of the year in which they would have expired."

Sec. 4. Section 7 of Chapter 532 of the Session Laws of 1975, as amended by Section 5 of Chapter 178 of the Session Laws of 1981, reads as rewritten:

"Sec. 7. The election of said members of the Buncombe County Board of Education in the various ~~primary~~ elections as hereinabove provided for shall be governed by the applicable provisions of Chapters 115C and Chapter 163 of the General Statutes, relating to ~~primaries and~~ elections, insofar as the same may be applicable and not in conflict with the expressed terms of this act. The Buncombe County Board of Elections is hereby authorized and empowered to create any necessary precincts, to appoint any necessary election officials and to set up and establish all necessary books and records for the conduct of said elections."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of May, 1995.

S.B. 1017 **CHAPTER 94**

AN ACT TO CHANGE THE NAME OF THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NORTH CAROLINA TO THE NORTH CAROLINA MEDICAL BOARD AND TO MAKE CONFORMING CHANGES THROUGHOUT THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-2 reads as rewritten:

"§ *90-2. ~~Board of Examiners.~~ Medical Board.*

(a) In order to properly regulate the practice of medicine and surgery for the benefit and protection of the people of North Carolina, there is established ~~a Board of Medical Examiners of the State of North Carolina,~~ the North Carolina Medical Board. The Board shall consist of 12 members.

(1) Seven of the members shall be duly licensed physicians elected and nominated to the Governor by the North Carolina Medical Society.

(2) Of the remaining five members, all to be appointed by the Governor, at least three shall be public members and at least one shall be a physician assistant as defined in G.S. 90-18.1 or a nurse practitioner as defined in G.S. 90-18.2. A public member shall not be a health care provider nor the spouse of a health care provider. For purposes of board membership, 'health care provider' means any licensed health care professional and any agent or employee of any health care institution, health care insurer, health care professional school, or a member of any allied health profession. For purposes of this section, a person enrolled in a program to prepare him to be a licensed health care professional or an allied health professional shall be deemed a health care provider. For purposes of this section, any person with significant financial interest in a health service or profession is not a public member.

(b) No member appointed to the Board on or after November 1, 1981, shall serve more than two complete consecutive three-year terms, except that each member shall serve until his successor is chosen and qualifies.

(c) In order to establish regularly overlapping terms, the terms of office of the members shall expire as follows: two on October 31, 1993; four on October 31, 1994; four on October 31, 1995; and two on October 31, 1996. No initial physician member of the Board may serve another term until at least three years from the date of expiration of his current term.

(d) Any initial or regular member of the Board may be removed from office by the Governor for good cause shown. Any vacancy in the initial or regular physician membership of the Board shall be filled for the period of the unexpired term by the Governor from a list of physicians submitted by the North Carolina Medical Society Executive Council. Any vacancy in the

public membership of the Board shall be filled by the Governor for the unexpired term.

(e) The ~~Board of Medical Examiners~~ North Carolina Medical Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as any private person or corporation, subject only to approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing, and sale of real property. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board."

Sec. 2. Effective until October 1, 1998, G.S. 58-50-25 reads as rewritten:

"*§ 58-50-25. Nurses' services.*

No agency, institution or physician providing a service for which payment or reimbursement is required to be made under a policy governed by Articles 1 through 64 of this Chapter shall be denied such payment or reimbursement on account of the fact that such services were rendered through a registered nurse acting under authority of rules and regulations adopted by the North Carolina Medical Board ~~of Medical Examiners~~ and the Board of Nursing pursuant to G.S. 90-6 and 90-171.23."

Sec. 3. Effective October 1, 1998, G.S. 58-50-25 reads as rewritten:

"*§ 58-50-25. Nurses' services.*

No agency, institution or physician providing a service for which payment or reimbursement is required to be made under a policy governed by Articles 1 through 64 of this Chapter shall be denied such payment or reimbursement on account of the fact that such services were rendered through a registered nurse acting under authority of rules and regulations adopted by the North Carolina Medical Board ~~of Medical Examiners~~ and the Board of Nursing pursuant to G.S. 90-6 and 90-171.23.

Nothing herein shall be construed to authorize contracting with or making payments directly to any nurse not otherwise permitted."

Sec. 4. Effective until October 1, 1998, G.S. 58-65-35 reads as rewritten:

"*§ 58-65-35. Nurses' services.*

No agency, institution or physician providing a service for which payment or reimbursement is required to be made under a contract governed by this Article and Article 66 of this Chapter shall be denied such payment or reimbursement on account of the fact that the service was rendered through a registered nurse acting under authority of rules and regulations adopted by the North Carolina Medical Board ~~of Medical Examiners~~ and the Board of Nursing pursuant to G.S. 90-6 and 90-171.23."

Sec. 5. Effective October 1, 1998, G.S. 58-65-35 reads as rewritten:

"*§ 58-65-35. Nurses' services.*

No agency, institution or physician providing a service for which payment or reimbursement is required to be made under a contract governed by this Article and Article 66 of this Chapter shall be denied such payment or reimbursement on account of the fact that the service was rendered through a registered nurse acting under authority of rules and regulations adopted by the North Carolina Medical Board ~~of Medical Examiners~~ and the Board of Nursing pursuant to G.S. 90-6 and 90-171.23.

Nothing herein shall be construed to authorize contracting with or making payments directly to a nurse not otherwise permitted."

Sec. 6. G.S. 88A-5(2) reads as rewritten:

"(2) A physician licensed under Chapter 90 of the General Statutes, who shall be nominated by the North Carolina Medical Board ~~of Medical Examiners~~ and appointed by the Governor."

Sec. 7. G.S. 90-4 reads as rewritten:

"*§ 90-4. Board elects officers; quorum.*

The North Carolina Medical Board ~~of Medical Examiners~~ is authorized to elect all officers and adopt all bylaws as may be necessary. A majority of the membership of the Board shall constitute a quorum for the transaction of business."

Sec. 8. G.S. 90-5 reads as rewritten:

"*§ 90-5. Meetings of Board.*

The North Carolina Medical Board ~~of Medical Examiners~~ shall assemble once in every year in the City of Raleigh, and shall remain in session from day to day until all applicants who may present themselves for examination within the first two days of this meeting have been examined and disposed of; other meetings in each year may be held at some suitable point in the State if deemed advisable."

Sec. 9. G.S. 90-6 reads as rewritten:

"*§ 90-6. Regulations governing applicants for license, examinations, etc.; appointment of subcommittee.*

The North Carolina Medical Board ~~of Medical Examiners~~ is empowered to prescribe such regulations as it may deem proper, governing applicants for license, admission to examinations, the conduct of applicants during examinations, and the conduct of examinations proper.

The North Carolina Medical Board ~~of Medical Examiners~~ shall appoint and maintain a subcommittee to work jointly with a subcommittee of the Board of Nursing to develop rules and regulations to govern the performance of medical acts by registered nurses, including the determination of reasonable fees to accompany an application for approval not to exceed one hundred dollars ($100.00) and for renewal of such approval not to exceed fifty dollars ($50.00). The fee for reactivation of an inactive incomplete application shall be five dollars ($5.00). Rules and regulations developed by this subcommittee from time to time shall govern the performance of medical acts by registered nurses and shall become effective when adopted by both the North Carolina Medical Board ~~of Medical Examiners~~ and the Board of Nursing. The North Carolina Medical Board ~~of Medical Examiners~~ shall have responsibility for securing compliance with these regulations."

Sec. 10. G.S. 90-7 reads as rewritten:

"*§ 90-7. Bond of secretary.*

The secretary of the North Carolina Medical Board ~~of Medical Examiners~~ shall give bond with good surety, to the president of the Board, for the safekeeping and proper payment of all moneys that may come into his hands."

Sec. 11. G.S. 90-9 reads as rewritten:

"*§ 90-9. Examination for license; scope; conditions and prerequisites.*

It is the duty of the North Carolina Medical Board ~~of Medical Examiners~~ to examine for license to practice medicine or surgery, or any of the branches thereof, every applicant who complies with the following provisions: the applicant shall, before admittance to examination, satisfy the Board of possession of academic education equal to the entrance requirements of the University of North Carolina, or furnish a certificate from the superintendent of public instruction of the county that the applicant has passed an examination upon literary attainments to meet the requirements of entrance in the regular course of the State University. The applicant shall exhibit a diploma or furnish satisfactory proof of graduation from a medical college or an osteopathic college approved by the American Osteopathic Association at the time of graduation, dated from January 1, 1960, to the present, and whose medical and osteopathic schools shall require an attendance of not less than four years or for a lesser period of time approved by the Board, and supply these facilities for clinical and scientific instruction as meet the approval of the Board. An applicant shall have graduated from a medical college approved by the Liaison Commission on Medical Education or osteopathic college that has been approved by the American Osteopathic Association; or, if graduated from any other medical or osteopathic college, the applicant shall be enrolled in a graduate medical education and training program in North Carolina that has been approved by the Board. An applicant who has graduated from a medical college not approved by the Liaison Commission on Medical Education or osteopathic college that has not been approved by the American Osteopathic Association and who has not enrolled in a graduate medical education and training program in North Carolina which has been approved by the Board shall satisfy the Board that the applicant has successfully completed three years of graduate medical education in a training program approved by the Board. No applicant from a medical or osteopathic college that has been disapproved by the Board is eligible to take the examination.

The examination shall cover the branches of medical science and subjects which the Board considers necessary to determine competence to practice medicine. The Board may divide the examination into parts or components.

The Board shall grant the applicant a license authorizing the applicant to practice medicine in any of its branches if the Board determines that the applicant has successfully passed the examination, is of good moral character, and is:

(1) a graduate of a medical college approved by the Liaison Commission on Medical Education or an osteopathic college approved by the American Osteopathic Association and has successfully completed one year of training in a medical education program approved by the Board after graduation from medical school;

(2) a graduate of a medical college approved by the Liaison Commission on Medical Education or an osteopathic college approved by the American Osteopathic Association, is a dentist licensed to practice dentistry under Article 2 of Chapter 90 of the General Statutes, and has been certified by the American Board of Oral and Maxillofacial Surgery after having completed a residency

in an Oral and Maxillofacial Surgery Residency Program approved by the Board before completion of medical school; or

(3) a graduate of a medical college that has not been approved by the Liaison Commission on Medical Education or an osteopathic college that has not been approved by the American Osteopathic Association and has successfully completed three years of training in a medical education program approved by the Board after graduation from medical school.

Applicants shall be examined by number only; names and other identifying information shall not appear on examination papers."

Sec. 12. G.S. 90-11 reads as rewritten:

"*§ 90-11. Qualifications of applicant for license.*

Every applicant for a license to practice medicine or for approval to perform medical acts in the State shall satisfy the North Carolina Medical Board ~~of Medical Examiners~~ that such applicant is of good moral character and meets the other qualifications for the issuance of such a license or for such approval before any such license or approval is granted by the Board to such applicant."

Sec. 13. G.S. 90-13 reads as rewritten:

"*§ 90-13. When license without examination allowed.*

The North Carolina Medical Board ~~of Medical Examiners~~ shall in their discretion issue a license to any applicant to practice medicine and surgery in this State without examination if said applicant exhibits a diploma or satisfactory proof of graduation from a medical or osteopathic college, approved as provided in G.S. 90-9 and requiring an attendance of not less than four years or for such lesser period of time approved by the Board, and a license issued to him to practice medicine and surgery by the Board of Medical Examiners of another state, and has successfully completed one year of training after his graduation from medical college in a medical education and training program approved by the Board, in which program the Board may permit him to practice medicine. An applicant for licensing under this section who was graduated from a medical college not approved by the Liaison Commission on Medical Education or osteopathic college that has not been approved by the American Osteopathic Association shall have successfully completed three years of training in a medical education and training program approved by the Board after graduation. The Board may grant a license under this section for any period of time and with any conditions it deems appropriate. No license may be granted to any applicant who was graduated from a medical or osteopathic college which has been disapproved by the Board."

Sec. 14. G.S. 90-14.1 reads as rewritten:

"*§ 90-14.1. Judicial review of Board's decision denying issuance of a license.*

Whenever the North Carolina Medical Board ~~of Medical Examiners~~ has determined that a person who has duly made application to take an examination to be given by the Board showing his education, training and other qualifications required by said Board, or that a person who has taken and passed an examination given by the Board, has failed to satisfy the Board of his qualifications to be examined or to be issued a license, for any cause other than failure to pass an examination, the Board shall immediately

notify such person of its decision, and indicate in what respect the applicant has so failed to satisfy the Board. Such applicant shall be given a formal hearing before the Board upon request of such applicant filed with or mailed by registered mail to the secretary of the Board at Raleigh, North Carolina, within 10 days after receipt of the Board's decision, stating the reasons for such request. The Board shall within 20 days of receipt of such request notify such applicant of the time and place of a public hearing, which shall be held within a reasonable time. The burden of satisfying the Board of his qualifications for licensure shall be upon the applicant. Following such hearing, the Board shall determine whether the applicant is qualified to be examined or is entitled to be licensed as the case may be. Any such decision of the Board shall be subject to judicial review upon appeal to the Superior Court of Wake County upon the filing with the Board of a written notice of appeal with exceptions taken to the decision of the Board within 20 days after service of notice of the Board's final decision. Within 30 days after receipt of notice of appeal, the secretary of the Board shall certify to the clerk of the Superior Court of Wake County the record of the case which shall include a copy of the notice of hearing, a transcript of the testimony and evidence received at the hearing, a copy of the decision of the Board, and a copy of the notice of appeal and exceptions. Upon appeal the case shall be heard by the judge without a jury, upon the record, except that in cases of alleged omissions or errors in the record, testimony may be taken by the court. The decision of the Board shall be upheld unless the substantial rights of the applicant have been prejudiced because the decision of the Board is in violation of law or is not supported by any evidence admissible under this Article, or is arbitrary or capricious. Each party to the review proceeding may appeal to the Supreme Court as hereinafter provided in G.S. 90-14.11."

Sec. 15. G.S. 90-15 reads as rewritten:

"*§ 90-15. License fee; salaries, fees, and expenses of Board.*

Each applicant for a license by examination shall pay to the North Carolina Medical Board ~~of Medical Examiners of the State of North Carolina~~ a fee which shall be prescribed by the Board in an amount not exceeding the sum of four hundred dollars ($400.00) plus the cost of test materials before being admitted to the examination. Whenever a license is granted without examination, as authorized in G.S. 90-13, the applicant shall pay to the Board a fee in an amount to be prescribed by the Board not in excess of two hundred fifty dollars ($250.00). Whenever a limited license is granted as provided in G.S. 90-12, the applicant shall pay to the Board a fee not to exceed one hundred fifty dollars ($150.00), except where a limited license to practice in a medical education and training program approved by the Board for the purpose of education or training is granted, the applicant shall pay a fee of twenty-five dollars ($25.00). A fee of twenty-five dollars ($25.00) shall be paid for the issuance of a duplicate license. All fees shall be paid in advance to the ~~Board of Medical Examiners of the State of North Carolina,~~ North Carolina Medical Board, to be held in a fund for the use of the Board. The compensation and expenses of the members and officers of the the Board and all expenses proper and necessary in the opinion of the Board to the discharge of its duties under and to enforce the laws regulating

the practice of medicine or surgery shall be paid out of the fund, upon the warrant of the Board. The per diem compensation of Board members shall not exceed two hundred dollars ($200.00) per day per member for time spent in the performance and discharge of duties as a member. Any unexpended sum or sums of money remaining in the treasury of the Board at the expiration of the terms of office of the members of the Board shall be paid over to their successors in office.

For the initial and annual registration of an assistant to a physician, the Board may require the payment of a fee not to exceed a reasonable amount."

Sec. 16. G.S. 90-15.1 reads as rewritten:

"*§ 90-15.1. Registration every two years with Board.*

Every person licensed to practice medicine by the North Carolina Medical Board ~~of Medical Examiners~~ shall, during the month of January in every odd-numbered year, register with the Board. A person who registers with the Board shall report to the Board the person's name and office and residence address and any other information required by the Board, and shall pay a registration fee fixed by the Board not in excess of two hundred dollars ($200.00). A physician who fails to register when required shall pay an additional fee of twenty dollars ($20.00) to the Board. Should a physician fail to register and pay the fees imposed, and should such failure continue for a period of 30 days, the license of such physician may be suspended by the Board, after notice and hearing at the next regular meeting of the Board. Upon payment of all fees and penalties which are due, the license of the physician may be reinstated, subject to the Board requiring the physician to appear before the Board for an interview and to comply with other licensing requirements."

Sec. 17. G.S. 90-16 reads as rewritten:

"*§ 90-16. Board to keep record; publication of names of licentiates; transcript as evidence; receipt of evidence concerning treatment of patient who has not consented to public disclosure.*

The North Carolina Medical Board ~~of Examiners~~ shall keep a regular record of its proceedings in a book kept for that purpose, together with the names of the members of the Board present, the names of the applicants for license, and other information as to its actions. The North Carolina Medical Board ~~of Examiners~~ shall cause to be entered in a separate book the name of each applicant to whom a license is issued to practice medicine or surgery, along with any information pertinent to such issuance. The North Carolina Medical Board ~~of Examiners~~ shall publish the names of those licensed in three daily newspapers published in the State of North Carolina, within 30 days after granting the same. A transcript of any such entry in the record books, or certificate that there is not entered therein the name and proficiency or date of granting such license of a person charged with the violation of the provisions of this Article, certified under the hand of the secretary and the seals of the Board of Medical Examiners of the State of North Carolina, shall be admitted as evidence in any court of this State when it is otherwise competent.

The Board may in a closed session receive evidence involving or concerning the treatment of a patient who has not expressly or impliedly consented to the public disclosure of such treatment as may be necessary for

the protection of the rights of such patient or of the accused physician and the full presentation of relevant evidence. All records, papers and other documents containing information collected and compiled by the Board, or its members or employees as a result of investigations, inquiries or interviews conducted in connection with a licensing or disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes; provided, however, that any notice or statement of charges against any licensee, or any notice to any licensee of a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that it may contain information collected and compiled as a result of any such investigation, inquiry or interview; and provided, further, that if any such record, paper or other document containing information theretofore collected and compiled by the Board, as hereinbefore provided, is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record within the meaning of Chapter 132 of the General Statutes.

In any proceeding before the Board, in any record of any hearing before the Board, and in the notice of the charges against any licensee (notwithstanding any provision herein to the contrary) the Board may withhold from public disclosure the identity of a patient who has not expressly or impliedly consented to the public disclosure of treatment by the accused physician."

Sec. 18. G.S. 90-18(13) reads as rewritten:

"(13) Any act, task or function performed by an assistant to a person licensed as a physician by the North Carolina Medical Board ~~of Medical Examiners~~ when

a. Such assistant is approved by and annually registered with the Board as one qualified by training or experience to function as an assistant to a physician, except that no more than two assistants may be currently registered for any physician, and

b. Such act, task or function is performed at the direction or under the supervision of such physician, in accordance with rules and regulations promulgated by the Board, and

c. The services of the assistant are limited to assisting the physician in the particular field or fields for which the assistant has been trained, approved and registered;

Provided that this subdivision shall not limit or prevent any physician from delegating to a qualified person any acts, tasks or functions which are otherwise permitted by law or established by custom."

Sec. 19. G.S. 90-18(14) reads as rewritten:

"(14) The practice of nursing by a registered nurse engaged in the practice of nursing and the performance of acts otherwise constituting medical practice by a registered nurse when performed in accordance with rules and regulations developed by a joint subcommittee of the North Carolina Medical Board ~~of Medical Examiners~~ and the Board of Nursing and adopted by both boards."

Sec. 20. G.S. 90-18.1 reads as rewritten:

"*§ 90-18.1. Limitations on physician assistants.*

(a) Any person who is approved under the provisions of G.S. 90-18(13) to perform medical acts, tasks or functions as an assistant to a physician may use the title 'physician assistant.' Any other person who uses the title in any form or holds out to be a physician assistant or to be so approved, shall be deemed to be in violation of this Article.

(b) Physician assistants are authorized to write prescriptions for drugs under the following conditions:

(1) The North Carolina Medical Board ~~of Medical Examiners~~ has adopted regulations governing the approval of individual physician assistants to write prescriptions with such limitations as the Board may determine to be in the best interest of patient health and safety;

(2) The physician assistant has current approval from the Board;

(3) The North Carolina Medical Board ~~of Medical Examiners~~ has assigned an identification number to the physician assistant which is shown on the written prescription; and

(4) The supervising physician has provided to the physician assistant written instructions about indications and contraindications for prescribing drugs and a written policy for periodic review by the physician of the drugs prescribed.

(c) Physician assistants are authorized to compound and dispense drugs under the following conditions:

(1) The function is performed under the supervision of a licensed pharmacist; and

(2) Rules and regulations of the North Carolina Board of Pharmacy governing this function are complied with.

(d) Physician assistants are authorized to order medications, tests and treatments in hospitals, clinics, nursing homes and other health facilities under the following conditions:

(1) The North Carolina Medical Board ~~of Medical Examiners~~ has adopted regulations governing the approval of individual physician assistants to order medications, tests and treatments with such limitations as the Board may determine to be in the best interest of patient health and safety;

(2) The physician assistant has current approval from the Board;

(3) The supervising physician has provided to the physician assistant written instructions about ordering medications, tests and treatments, and when appropriate, specific oral or written instructions for an individual patient, with provision for review by the physician of the order within a reasonable time, as determined by the Board, after the medication, test or treatment is ordered; and

(4) The hospital or other health facility has adopted a written policy, approved by the medical staff after consultation with the nursing administration, about ordering medications, tests and treatments, including procedures for verification of the physician assistants'

orders by nurses and other facility employees and such other procedures as are in the interest of patient health and safety.

(e) Any prescription written by a physician assistant or order given by a physician assistant for medications, tests or treatments shall be deemed to have been authorized by the physician approved by the Board as the supervisor of the physician assistant and such supervising physician shall be responsible for authorizing such prescription or order.

(f) Any registered nurse or licensed practical nurse who receives an order from a physician assistant for medications, tests or treatments is authorized to perform that order in the same manner as if it were received from a licensed physician."

Sec. 21. G.S. 90-18.2 reads as rewritten:

"*§ 90-18.2. Limitations on nurse practitioners.*

(a) Any nurse approved under the provisions of G.S. 90-18(14) to perform medical acts, tasks or functions may use the title 'nurse practitioner.' Any other person who uses the title in any form or holds out to be a nurse practitioner or to be so approved, shall be deemed to be in violation of this Article.

(b) Nurse practitioners are authorized to write prescriptions for drugs under the following conditions:

(1) The North Carolina Medical Board ~~of Medical Examiners~~ and Board of Nursing have adopted regulations developed by a joint subcommittee governing the approval of individual nurse practitioners to write prescriptions with such limitations as the boards may determine to be in the best interest of patient health and safety;

(2) The nurse practitioner has current approval from the boards;

(3) The North Carolina Medical Board ~~of Medical Examiners~~ has assigned an identification number to the nurse practitioner which is shown on the written prescription; and

(4) The supervising physician has provided to the nurse practitioner written instructions about indications and contraindications for prescribing drugs and a written policy for periodic review by the physician of the drugs prescribed.

(c) Nurse practitioners are authorized to compound and dispense drugs under the following conditions:

(1) The function is performed under the supervision of a licensed pharmacist; and

(2) Rules and regulations of the North Carolina Board of Pharmacy governing this function are complied with.

(d) Nurse practitioners are authorized to order medications, tests and treatments in hospitals, clinics, nursing homes and other health facilities under the following conditions:

(1) The North Carolina Medical Board ~~of Medical Examiners~~ and Board of Nursing have adopted regulations developed by a joint subcommittee governing the approval of individual nurse practitioners to order medications, tests and treatments with such limitations as the boards may determine to be in the best interest of patient health and safety;

(2) The nurse practitioner has current approval from the boards;

(3) The supervising physician has provided to the nurse practitioner written instructions about ordering medications, tests and treatments, and when appropriate, specific oral or written instructions for an individual patient, with provision for review by the physician of the order within a reasonable time, as determined by the Board, after the medication, test or treatment is ordered; and

(4) The hospital or other health facility has adopted a written policy, approved by the medical staff after consultation with the nursing administration, about ordering medications, tests and treatments, including procedures for verification of the nurse practitioners' orders by nurses and other facility employees and such other procedures as are in the interest of patient health and safety.

(e) Any prescription written by a nurse practitioner or order given by a nurse practitioner for medications, tests or treatments shall be deemed to have been authorized by the physician approved by the boards as the supervisor of the nurse practitioner and such supervising physician shall be responsible for authorizing such prescription or order.

(f) Any registered nurse or licensed practical nurse who receives an order from a nurse practitioner for medications, tests or treatments is authorized to perform that order in the same manner as if it were received from a licensed physician."

Sec. 22. G.S. 90-21 reads as rewritten:

"*§ 90-21. Certain offenses prosecuted in superior court; duties of Attorney General.*

In case of the violation of the criminal provisions of G.S. 90-18, the Attorney General of the State of North Carolina, upon complaint of the ~~Board of Medical Examiners of the State of North Carolina,~~ North Carolina Medical Board, shall investigate the charges preferred, and if in his judgment the law has been violated, he shall direct the district attorney of the district in which the offense was committed to institute a criminal action against the offending persons. A district attorney's fee of five dollars ($5.00) shall be allowed and collected in accordance with the provisions of G.S. 6-12. The North Carolina Medical Board ~~of Medical Examiners~~ may also employ, at their own expense, special counsel to assist the Attorney General or the district attorney.

Exclusive original jurisdiction of all criminal actions instituted for the violations of G.S. 90-18 shall be in the superior court, the provisions of any special or local act to the contrary notwithstanding."

Sec. 23. G.S. 90-21.22(a) reads as rewritten:

"(a) The North Carolina Medical Board ~~of Medical Examiners~~ may, under rules adopted by the Board in compliance with Chapter 150B of the General Statutes, enter into agreements with the North Carolina Medical Society and its local medical society components, and with the North Carolina Academy of Physician Assistants for the purpose of conducting peer review activities. Peer review activities to be covered by such agreements shall include investigation, review, and evaluation of records, reports, complaints, litigation and other information about the practices and practice

patterns of physicians licensed by the Board, and of physician assistants approved by the Board, and shall include programs for impaired physicians and impaired physician assistants. Agreements between the Academy and the Board shall be limited to programs for impaired physicians and physician assistants and shall not include any other peer review activities."

Sec. 24. G.S. 90-85.3(r) reads as rewritten:

"(r) 'Practice of pharmacy' means the responsibility for: interpreting and evaluating drug orders, including prescription orders; compounding, dispensing and labeling prescription drugs and devices; properly and safely storing drugs and devices; maintaining proper records; and controlling pharmacy goods and services. A pharmacist may advise and educate patients and health care providers concerning therapeutic values, content, uses and significant problems of drugs and devices; assess, record and report adverse drug and device reactions; take and record patient histories relating to drug and device therapy; monitor, record and report drug therapy and device usage; perform drug utilization reviews; and participate in drug and drug source selection and device and device source selection as provided in G.S. 90-85.27 through G.S. 90-85.31. A pharmacist who has received special training may be authorized and permitted to administer drugs pursuant to a specific prescription order in accordance with rules and regulations adopted by each of the Boards of Pharmacy, the Board of Nursing, and the ~~Board of Medical Examiners of the State of North Carolina.~~ North Carolina Medical Board. Such rules and regulations shall be designed to ensure the safety and health of the patients for whom such drugs are administered."

Sec. 25. G.S. 90-85.21(b) reads as rewritten:

"(b) Each physician who dispenses prescription drugs, for a fee or other charge, shall annually register with the Board on the form provided by the Board, and with the licensing board having jurisdiction over the physician. Such dispensing shall comply in all respects with the relevant laws and regulations that apply to pharmacists governing the distribution of drugs, including packaging, labeling, and record keeping. Authority and responsibility for disciplining physicians who fail to comply with the provisions of this subsection are vested in the licensing board having jurisdiction over the physician. The form provided by the Board under this subsection shall be as follows:

Application For Registration
With The Pharmacy Board
As A Dispensing Physician

1. Name and Address of Dispensing Physician

2. Affix Dispensing Label Here

3. Physician's North Carolina License Number ___

4. Are you currently practicing in a professional association registered with the North Carolina ~~Board of~~ Medical ~~Examiners?~~ Board? _Yes _No. If yes, enter the name and registration number of the professional corporation:

5. I certify that the information is correct and complete.

Signature Date".

Sec. 26. G.S. 90-101(h) reads as rewritten:

"(h) A physician licensed by the North Carolina Medical Board ~~of Medical Examiners~~ pursuant to Article 1 of this Chapter may possess, dispense or administer tetrahydrocannabinols in duly constituted pharmaceutical form for human administration for treatment purposes pursuant to rules adopted by the Commission."

Sec. 27. G.S. 90-101(i) reads as rewritten:

"(i) A physician licensed by the North Carolina Medical Board ~~of Medical Examiners~~ pursuant to Article 1 of this Chapter may dispense or administer Dronabinol or Nabilone as scheduled in G.S. 90-90(e) only as an antiemetic agent in cancer chemotherapy."

Sec. 28. G.S. 90-171.23(14) reads as rewritten:

"(14) Appoint and maintain a subcommittee of the Board to work jointly with the subcommittee of the North Carolina Medical Board ~~of Medical Examiners~~ to develop rules and regulations to govern the performance of medical acts by registered nurses and to determine reasonable fees to accompany an application for approval or renewal of such approval as provided in G.S. 90-6. The fees and rules developed by this subcommittee shall govern the performance of medical acts by registered nurses and shall become effective when they have been adopted by both Boards;".

Sec. 29. G.S. 90-171.37 reads as rewritten:

"*§ 90-171.37. Revocation, suspension, or denial of licensure.*

The Board shall initiate an investigation upon receipt of information about any practice that might violate any provision of this Article or any rule or regulation promulgated by the Board. In accordance with the provisions of Chapter 150B of the General Statutes, the Board may require remedial education, issue a letter of reprimand, restrict, revoke, or suspend any license to practice nursing in North Carolina or deny any application for licensure if the Board determines that the nurse or applicant:

(1) Has given false information or has withheld material information from the Board in procuring or attempting to procure a license to practice nursing;

(2) Has been convicted of or pleaded guilty or nolo contendere to any crime which indicates that the nurse is unfit or incompetent to practice nursing or that the nurse has deceived or defrauded the public;

(3) Has a mental or physical disability or uses any drug to a degree that interferes with his or her fitness to practice nursing;

(4) Engages in conduct that endangers the public health;
(5) Is unfit or incompetent to practice nursing by reason of deliberate or negligent acts or omissions regardless of whether actual injury to the patient is established;
(6) Engages in conduct that deceives, defrauds, or harms the public in the course of professional activities or services;
(7) Has violated any provision of this Article; or
(8) Has willfully violated any rules enacted by the Board.

The Board may take any of the actions specified above in this section when a registered nurse approved to perform medical acts has violated rules governing the performance of medical acts by a registered nurse; provided this shall not interfere with the authority of the North Carolina Medical Board ~~of Medical Examiners~~ to enforce rules and regulations governing the performance of medical acts by a registered nurse.

The Board may reinstate a revoked license or remove licensure restrictions when it finds that the reasons for revocation or restriction no longer exist and that the nurse or applicant can reasonably be expected to safely and properly practice nursing."

Sec. 30. G.S. 90-178.2(3) reads as rewritten:

"(3) 'Midwifery' means the act of providing prenatal, intrapartum, postpartum, newborn and interconceptional care. The term does not include the practice of medicine by a physician licensed to practice medicine when engaged in the practice of medicine as defined by law, the performance of medical acts by a physician assistant or nurse practitioner when performed in accordance with the rules of the ~~Board of Medical Examiners,~~ North Carolina Medical Board, the practice of nursing by a registered nurse engaged in the practice of nursing as defined by law, or the rendering of childbirth assistance in an emergency situation."

Sec. 31. G.S. 90-178.4(a) reads as rewritten:

"(a) The joint subcommittee of the North Carolina Medical Board ~~of Medical Examiners~~ and the Board of Nursing created pursuant to G.S. 90-18.2 shall administer the provisions of this Article and the rules adopted pursuant to this Article; Provided, however, that actions of the joint subcommittee pursuant to this Article shall not require approval by the ~~Boards of Medical Examiners and~~ North Carolina Medical Board and the Board of Nursing. For purposes of this Article, the joint subcommittee shall be enlarged by four additional members, including two certified midwives and two obstetricians who have had working experience with midwives."

Sec. 32. G.S. 110-91(1) reads as rewritten:

"(1) Medical Care and Sanitation. -- The Commission for Health Services shall adopt rules which establish minimum sanitation standards for child day care facilities and their personnel. The sanitation rules adopted by the Commission for Health Services shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of ventilation; sanitation of water supply, lavatory facilities, toilet facilities, sewage disposal, food protection facilities, bactericidal

treatment of eating and drinking utensils, and solid-waste storage and disposal; methods of food preparation and serving; infectious disease control; sleeping facilities; and other items and facilities as are necessary in the interest of the public health. These rules shall be developed in consultation with the Department.

The Commission shall adopt rules to establish minimum requirements for child and staff health assessments and medical care procedures. These rules shall be developed in consultation with the Department of Environment, Health, and Natural Resources. Each child shall have a health assessment before being admitted or within 30 days following admission to a child day care facility. The assessment shall be done by: (i) a licensed physician, (ii) the physician's authorized agent who is currently approved by the North Carolina ~~Board of Medical Examiners,~~ Medical Board, or comparable certifying board in any state contiguous to North Carolina, (iii) a certified nurse practitioner, or (iv) a public health nurse meeting the Department of Environment, Health, and Natural Resources' Standards for Early Periodic Screening, Diagnosis, and Treatment Program. A record of each child's assessment shall be on file in the records of the facility. However, no health assessment shall be required of any child who is and has been in normal health and whose parent, guardian, or full-time custodian objects in writing to a health assessment on religious grounds which conform to the teachings and practice of any recognized church or religious denomination.

Each child shall be immunized in a manner that meets the requirements of Article 6 of Chapter 130A of the General Statutes and the pertinent rules adopted by the Commission for Health Services.

Each child day care facility shall have a plan of emergency medical care which shall include provisions for communication with and transportation to a specified medical resource, unless otherwise previously instructed. No child receiving day care shall be administered any drug or other medication without specific written instructions from a physician or the child's parent, guardian or full-time custodian. Emergency information on each child in care, including the names, addresses, and telephone numbers of the child's physician and parents, legal guardian or full-time custodian shall be readily available to the staff of the child day care facility while children are in care.

Nonprofit, tax-exempt organizations that provide prepared meals to day care centers only are considered day care centers for purposes of compliance with appropriate sanitation standards."

Sec. 33. G.S. 130A-403(8) reads as rewritten:

"(8) 'Qualified individual' means any of the following individuals who has completed a course in eye enucleation and has been certified as competent to enucleate eyes by an accredited school of medicine in this State:

a. An embalmer licensed to practice in this State;
b. A physician's assistant approved by the North Carolina Medical Board ~~of Medical Examiners~~ pursuant to G.S. 90-18(13);
c. A registered or a licensed practical nurse licensed by the Board of Nursing pursuant to Article 9A of Chapter 90 of the General Statutes;
d. A student who is enrolled in an accredited school of medicine operating within this State and who has completed two or more years of a course of study leading to the awarding of a degree of doctor of medicine;
e. A technician who has successfully completed a written examination by the North Carolina Eye and Human Tissue Bank, Inc., certified by the Eye Bank Association of America."

Sec. 34. G.S. 143-509(9) reads as rewritten:

"(9) Promote a means of training individuals to administer life-saving treatment to persons who suffer a severe adverse reaction to insect stings. Individuals, upon successful completion of this training program, may be approved by the North Carolina Medical Board ~~of Medical Examiners~~ to administer epinephrine to these persons, in the absence of the availability of physicians or other practitioners who are authorized to administer the treatment. This training may also be offered as part of the emergency medical technician training program."

Sec. 35. G.S. 143-514 reads as rewritten:

"*§ 143-514. Training programs; utilization of emergency services personnel.*

The Department of Human Resources in cooperation with educational institutions shall develop training programs for emergency medical service personnel. Upon successful completion of such training programs and other programs approved by the ~~Board of Medical Examiners of the State of North Carolina,~~ North Carolina Medical Board, emergency medical services personnel may, in the course of their emergency medical services duties, perform such acts, tasks and functions as they have been trained to perform and as provided in rules and regulations of such Board, regardless of other provisions of law."

Sec. 36. G.S. 148-19(c) reads as rewritten:

"(c) Each prisoner committed to the State Department of Correction shall receive a physical and mental examination by a health care professional authorized by the North Carolina Medical Board ~~of Medical Examiners~~ to perform such examinations as soon as practicable after admission and before being assigned to work. The prisoner's work and other assignments shall be made with due regard for the prisoner's physical and mental condition."

Sec. 37. Unless otherwise provided, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of May, 1995.

H.B. 543 **CHAPTER 95**

AN ACT MAKING A QUALIFIED EXCEPTION FROM THE PUBLIC RECORDS ACT FOR THE DARE COUNTY AND PAMLICO COUNTY GEOGRAPHICAL INFORMATION SYSTEMS.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 285 of the 1991 Session Laws, as amended by Chapter 845 of the 1991 Session Laws and Chapter 642 of the 1993 Session Laws, reads as rewritten:

"Sec. 2. This act applies to Brunswick, Catawba, Dare, Johnston, Lincoln, ~~and Orange~~ Orange, and Pamlico Counties and the Cities of Chapel Hill, Carrboro, Conover, Hickory, Lincolnton, and Newton only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of May, 1995.

H.B. 632 **CHAPTER 96**

AN ACT TO PROVIDE THAT THE LAWS RELATING TO MOTOR VEHICLES APPLY WITHIN THE CAROLINA TRACE COMMUNITY IN LEE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles are applicable to the streets, roadways, and alleys on the properties owned by or under the control of the Carolina Trace Association, Inc., or the members of the Carolina Trace Association, Inc. For purposes of this act, streets, roadways, and alleys in the Carolina Trace Community shall have the same meaning as highways and public vehicular areas pursuant to G.S. 20-4.01. A violation of any of those laws is punishable as prescribed by those laws.

Sec. 2. This act is enforceable by any company policeman appointed under Chapter 74E of the General Statutes, certified by the North Carolina Criminal Justice Education and Training Standards Commission, and employed by the Carolina Trace Association, Inc.

Sec. 3. This act shall not be construed as in any way interfering with the ownership and control of the streets, roadways, and alleys of the Carolina Trace Association, Inc., or its members as is now vested by law in that association or its members. The speed limits within the Carolina Trace Community shall be the same as those in effect at the time of ratification of this act. Any proposed change in the speed limit shall be submitted to and approved by the Lee County Board of Commissioners. Pursuant to G.S. 20-141, the Lee County Board of Commissioners may authorize by ordinance higher or lower speeds.

Sec. 4. This act applies only to Lee County.

Sec. 5. This act is effective upon ratification and shall expire July 1, 1997.

In the General Assembly read three times and ratified this the 22nd day of May, 1995.

H.B. 750 **CHAPTER 97**

AN ACT TO ALLOW THE USE OF STATE TRUCKS AND VANS FOR THE STATE GAMES OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Subdivision (8) of G.S. 143-341 reads as rewritten:

"(8) General Services:

a. To locate, maintain and care for public buildings and grounds; to establish, locate, maintain, and care for walks, driveways, trees, shrubs, flowers, fountains, monuments, memorials, markers, and tablets on public grounds; and to beautify the public grounds.

b. To provide necessary and adequate cleaning and janitorial service, elevator operation service, and other operation or maintenance services for the public buildings and grounds.

c. To provide necessary night watchmen for the public buildings and grounds.

d. To make prompt repair of all public buildings and the equipment, furniture, and fixtures thereof; and to establish and operate shops for that purpose.

e. To keep in repair, out of funds appropriated for that purpose, the furniture of the halls of the Senate and House of Representatives and the rooms of the Capitol used by the officers, clerks, and other employees of the General Assembly.

f. Struck out by Session Laws 1959, c. 68, s. 3.

g. To establish and operate a central mailing system for all State agencies, and in connection therewith and in the discretion of the Secretary, to make application for and procure a post-office substation for that purpose, and to do all things necessary in connection with the maintenance of the central mailing system. The Secretary may allocate and charge against the respective departments and agencies their proportionate parts of the cost of the maintenance of the central mailing system.

h. To provide necessary and adequate messenger service for the State agencies served by the Department. However, this may not be construed as preventing the employment and control of messengers by any State agency when those messengers are compensated out of the funds of the employing agency.

i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:

1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.
2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor pool.
3. To require on a schedule determined by the Department all State agencies to transfer ownership, custody or control of any or all passenger motor vehicles within the ownership, custody or control of that agency to the Department, except those motor vehicles under the ownership, custody or control of the Highway Patrol or the State Bureau of Investigation which are used primarily for law-enforcement purposes, and except those motor vehicles under the ownership, custody or control of the Department of Crime Control and Public Safety for Butner Public Safety which are used primarily for law-enforcement, fire, or emergency purposes.
4. To maintain, store, repair, dispose of, and replace state-owned motor vehicles under the control of the Department. The Department shall ensure that state-owned vehicles are not normally replaced until they have been driven for 90,000 miles or more.
5. Upon proper requisition, proper showing of need for use on State business only, and proper showing of proof that all persons who will be driving the motor vehicle have valid drivers' licenses, to assign suitable transportation, either on a temporary or permanent basis, to any State employee or agency. An agency assigned a motor vehicle may not allow a person to operate that motor vehicle unless that person displays to the agency and allows the agency to copy that person's valid driver's license. Notwithstanding G.S. 20-30(6), persons or agencies requesting assignment of motor vehicles may photostat or otherwise reproduce drivers' licenses for purposes of complying with this subpart.

   As used in this subpart, 'suitable transportation' means the standard vehicle in the State motor fleet, unless special towing provisions are required by the employee or agency. The Department may not assign any employee or agency a motor vehicle that is not suitable. The Department shall not approve requests for vehicle assignment or reassignment when the purpose of that assignment or reassignment is to provide any employee with a newer or lower mileage vehicle because of his or her rank, management authority, or length of service or because of any non-job-related reason. The Department shall not assign 'special use' vehicles, such as four-wheel drive vehicles or law enforcement vehicles, to any agency or

individual except upon written justification, verified by historical data, and accepted by the Secretary.

6. To allocate and charge against each State agency to which transportation is furnished, on a basis of mileage or of rental, its proportionate part of the cost of maintenance and operation of the motor pool.

The amount allocated and charged by the Department of Administration to State agencies to which transportation is furnished shall be at least as follows:

I. Pursuit vehicles and full size four-wheel drive vehicles -- $.24/mile.

II. Vans and compact four-wheel drive vehicles -- $.22/mile.

III. All other vehicles -- $.20/mile.

7. To adopt, with the approval of the Governor, reasonable rules for the efficient and economical operation, maintenance, repair, and replacement, as limited in paragraph 4. of this subdivision, of all state-owned motor vehicles under the control of the Department, and to enforce those rules; and to adopt, with the approval of the Governor, reasonable rules regulating the use of private motor vehicles upon State business by the officers and employees of State agencies, and to enforce those rules. The Department, with the approval of the Governor, may delegate to the respective heads of the agencies to which motor vehicles are permanently assigned by the Department the duty of enforcing the rules adopted by the Department pursuant to this paragraph. Any person who violates a rule adopted by the Department and approved by the Governor is guilty of a Class 1 misdemeanor.

7a. To adopt with the approval of the Governor and to enforce rules and to coordinate State policy regarding (i) the permanent assignment of state-owned passenger motor vehicles and (ii) the use of and reimbursement for those vehicles for the limited commuting permitted by this subdivision. For the purpose of this subdivision 7a, 'state-owned passenger motor vehicle' includes any state-owned passenger motor vehicle, whether or not owned, maintained or controlled by the Department of Administration, and regardless of the source of the funds used to purchase it. Notwithstanding the provisions of G.S. 20-190 or any other provisions of law, all state-owned passenger motor vehicles are subject to the provisions of this subdivision 7a; no permanent assignment shall be made and no one shall be exempt from payment of reimbursement for commuting or from the other provisions of this subdivision 7a except as provided by this subdivision 7a. Commuting, as defined and regulated by this subdivision, is limited to those specific cases in which the Secretary has received and accepted written justification, verified by historical data. The Department shall

not assign any state-owned motor vehicle that may be used for commuting other than those authorized by the procedure prescribed in this subdivision.

A State-owned passenger motor vehicle shall not be permanently assigned to an individual who is likely to drive it on official business at a rate of less than 3,150 miles per quarter unless (i) the individual's duties are routinely related to public safety or (ii) the individual's duties are likely to expose him routinely to life-threatening situations. A State-owned passenger motor vehicle shall also not be permanently assigned to an agency that is likely to drive it on official business at a rate of less than 3,150 miles per quarter unless the agency can justify to the Division of Motor Fleet Management the need for permanent assignment because of the unique use of the vehicle. The Department of Administration shall verify, on a quarterly basis, that each motor vehicle has been driven at the minimum allowable rate. If it has not and if the department by whom the individual to which the car is assigned is employed or the agency to which the car is assigned cannot justify the lower mileage for the quarter in view of the minimum annual rate, the permanent assignment shall be revoked immediately.

Every individual who uses a State-owned passenger motor vehicle, pickup truck, or van to drive between his official work station and his home, shall reimburse the State for these trips at a rate computed by the Department. This rate shall approximate the benefit derived from the use of the vehicle as prescribed by federal law. Reimbursement shall be for 20 days per month regardless of how many days the individual uses the vehicle to commute during the month. Reimbursement shall be made by payroll deduction. Funds derived from reimbursement on vehicles owned by the Motor Fleet Management Division shall be deposited to the credit of the Division; funds derived from reimbursements on vehicles initially purchased with appropriations from the Highway Fund and not owned by the Division shall be deposited in a Special Depository Account in the Department of Transportation, which shall revert to the Highway Fund; funds derived from reimbursement on all other vehicles shall be deposited in a Special Depository Account in the Department of Administration which shall revert to the General Fund. Commuting, for purposes of this paragraph, does not include those individuals whose office is in their home, as determined by the Department of Administration, Division of Motor Fleet Management. Also, this paragraph does not apply to the following vehicles: (i) clearly marked police and fire vehicles, (ii) delivery trucks with seating only for the driver, (iii) flatbed trucks, (iv) cargo carriers with over a 14,000 pound capacity, (v) school and passenger buses

with over 20 person capacities, (vi) ambulances, (vii) hearses, (viii) bucket trucks, (ix) cranes and derricks, (x) forklifts, (xi) cement mixers, (xii) dump trucks, (xiii) garbage trucks, (xiv) specialized utility repair trucks (except vans and pickup trucks), (xv) tractors, (xvi) unmarked law-enforcement vehicles that are used in undercover work and are operated by full-time, fully sworn law-enforcement officers whose primary duties include carrying a firearm, executing search warrants, and making arrests, and (xvii) any other vehicle exempted under Section 274(d) of the Internal Revenue Code of 1954, and Federal Internal Revenue Services regulations based thereon. The Department of Administration, Division of Motor Fleet Management, shall report quarterly to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office on individuals who use State-owned passenger motor vehicles, pickup trucks, or vans between their official work stations and their homes, who are not required to reimburse the State for these trips.

The Department of Administration shall revoke the assignment or require the Department owning the vehicle to revoke the assignment of a State-owned passenger motor vehicle, pickup truck or van to any individual who:

I. Uses the vehicle for other than official business except in accordance with the commuting rules;
II. Fails to supply required reports to the Department of Administration, or supplies incomplete reports, or supplies reports in a form unacceptable to the Department of Administration and does not cure the deficiency within 30 days of receiving a request to do so;
III. Knowingly and willfully supplies false information to the Department of Administration on applications for permanent assignments, commuting reimbursement forms, or other required reports or forms;
IV. Does not personally sign all reports on forms submitted for vehicles permanently assigned to him and does not cure the deficiency within 30 days of receiving a request to do so;
V. Abuses the vehicle; or
VI. Violates other rules or policy promulgated by the Department of Administration not in conflict with this act.

A new requisition shall not be honored until the Secretary of the Department of Administration is assured that the violation for which a vehicle was previously revoked will not recur.

The Department of Administration, with the approval of the Governor, may delegate, or conditionally delegate, to the respective heads of agencies which own passenger motor

vehicles or to which passenger motor vehicles are permanently assigned by the Department, the duty of enforcing all or part of the rules adopted by the Department of Administration pursuant to this subdivision 7a. The Department of Administration, with the approval of the Governor, may revoke this delegation of authority.

Prior to adopting rules under this paragraph, the Secretary of Administration may consult with the Advisory Budget Commission.

Notwithstanding the provisions of this section and G.S. 14-247, the Department of Administration may allow the organization sanctioned by the Governor's Council on Physical Fitness to conduct the North Carolina State Games to use State trucks and vans for the State Games of North Carolina. The Department of Administration shall not charge any fees for the use of the vehicles for the State Games. The State shall incur no liability for any damages resulting from the use of vehicles under this provision. The organization that conducts the State Games shall carry liability insurance of not less than one million dollars ($1,000,000) covering such vehicles while in its use and shall be responsible for the full cost of repairs to these vehicles if they are damaged while used for the State Games.

8. To adopt and administer rules for the control of all state-owned passenger motor vehicles and to require State agencies to keep all records and make all reports regarding motor vehicle use as the Secretary deems necessary.
9. To acquire motor vehicle liability insurance on all State-owned motor vehicles under the control of the Department.
10. To contract with the appropriate State prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such State prison authorities and the Secretary, of prison labor for use in connection with the operation of a central motor pool and related activities.
11. To report annually to the General Assembly on any rules adopted, amended or repealed under paragraphs 3, 7, or 7a of this subdivision.

j. To establish and operate central mimeographing and duplicating services, central stenographical and clerical pools, and other central services, if the Governor after appropriate investigation deems it advisable from the standpoint of efficiency and economy in operation to establish any or all such services. The Secretary may allocate and charge against the respective agencies their proportionate part of the cost of maintenance and operation of the central services which are established, in accordance with the rules adopted by him and approved by the Governor and Council of State pursuant to paragraph k. below. Upon the establishment of central

mimeographing and duplicating services, the Secretary may, with the approval of the Governor, require any State agency to be served by those central services to transfer to the Department ownership, custody, and control of any or all mimeographing and duplicating equipment and supplies within the ownership, custody, or control of such agency.

k. To require the State agencies and their officers and employees to utilize the central facilities and services which are established; and to adopt, with the approval of the Governor and Council of State, reasonable rules and procedures requiring the utilization of such central facilities and services, and governing their operation and the charges to be made for their services.

l. To provide necessary information service for visitors to the Capitol.

m. To perform such additional duties and exercise such additional powers as may be assigned to it by statute or by the Governor."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of May, 1995.

S.B. 448 **CHAPTER 98**

AN ACT TO IMPROVE THE ADMINISTRATION OF JUSTICE AND PROMOTE JUDICIAL ECONOMY AND EFFICIENCY WITHIN THE APPELLATE DIVISION OF THE GENERAL COURT OF JUSTICE BY PROVIDING FOR FULL EIGHT-YEAR TERMS OF OFFICE WHEN VACANCIES ARISE AND AN ELECTION IS HELD OTHER THAN AT THE EXPIRATION OF THE PRIOR TERM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-9 reads as rewritten:

"*§ 163-9. Filling vacancies in State and district judicial offices.*

Vacancies occurring in the offices of Justice of the Supreme Court, judge of the Court of Appeals, and judge of the superior court for causes other than expiration of term shall be filled by appointment of the Governor. An appointee to the office of Justice of the Supreme Court or judge of the Court of Appeals shall hold office until January 1 next following the election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held for an eight-year term and until a successor is elected and qualified. An appointee to the office of judge of superior court shall hold his place until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the ~~office: Provided, that when~~ office. When the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the

General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.

Vacancies in the office of district judge which occur before the expiration of a term shall not be filled by election. Vacancies in the office of district judge shall be filled in accordance with G.S. 7A-142."

Sec. 2. The terms of office of all duly elected judges of the Supreme Court and Judges of the Court of Appeals who are not already serving full eight-year terms of office are as follows:

(1) For the Court of Appeals seat now occupied by Joseph R. John, Sr., no election shall be held in 1998 for a full term, and the holder of that seat shall serve until a successor is elected in 2000 and qualifies. The succeeding term begins January 1, 2001.

(2) For the Court of Appeals seat now occupied by Ralph A. Walker, no election shall be held in 1998 for a full term, and the holder of that seat shall serve until a successor is elected in 2002 and qualifies. The succeeding term begins January 1, 2003.

(3) For the Court of Appeals seat now occupied by Mark D. Martin, no election shall be held in 1998 for a full term, and the holder of that seat shall serve until a successor is elected in 2002 and qualifies. The succeeding term begins January 1, 2003.

Sec. 3. If any provision of this act is held invalid by a court of competent jurisdiction, such holding shall invalidate the remaining provisions of this act, so that its provisions are inseparable.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of May, 1995.

S.B. 771 **CHAPTER 99**

AN ACT TO CLARIFY THE STATUS OF INDEPENDENT CONTRACTORS OF PUBLIC HOSPITALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-97.1 is amended by adding a new subsection to read:

"(c) Information regarding the qualifications, competence, performance, character, fitness, or conditions of appointment of an independent contractor who provides health care services under a contract with a public hospital as defined in G.S. 159-39, or with a hospital which has been sold or conveyed pursuant to G.S. 131E-8, is not a public record as defined by Chapter 132 of the General Statutes. Information regarding a hearing or investigation of a complaint, charge, or grievance by or against an independent contractor who provides health care services under a contract with a public hospital as defined in G.S. 159-39 or with a hospital which has been sold or conveyed pursuant to G.S. 131E-8, is not a public record as defined by Chapter 132 of the General Statutes. Final action making an appointment or discharge or removal by a public hospital having final authority for the appointment or discharge or removal shall be taken in an open meeting, unless otherwise exempted by law. The following

information with respect to each independent contractor of health care services of a public hospital, as defined by G.S. 159-39, is a matter of public record: name; age; date of original contract; beginning and ending dates; position title; position descriptions; and total compensation of current and former positions; and the date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of May, 1995.

S.B. 862 **CHAPTER 100**

AN ACT TO PROVIDE AN EXCEPTION TO THE LAW VOIDING FORUM SELECTION PROVISIONS IN CONTRACTS BY VALIDATING ACTIONS COMMENCED PURSUANT TO SUCH PROVISIONS WITH THE CONSENT OF ALL PARTIES TO THE CONTRACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 22B-3 reads as rewritten:

"*§ 22B-3. Contracts with forum selection provisions.*

~~Any~~ Except as otherwise provided in this section, any provision in a contract entered into in North Carolina that requires the prosecution of any action or the arbitration of any dispute that arises from the contract to be instituted or heard in another state is against public policy and is void and unenforceable. This prohibition shall not apply to non-consumer loan ~~transactions.~~ transactions or to any action or arbitration of a dispute that is commenced in another state pursuant to a forum selection provision with the consent of all parties to the contract at the time that the dispute arises."

Sec. 2. This act is effective upon ratification and applies to any action or arbitration commenced prior to or on or after that date.

In the General Assembly read three times and ratified this the 23rd day of May, 1995.

H.B. 383 **CHAPTER 101**

AN ACT CLARIFYING THAT THE DARE COUNTY BOARD OF COMMISSIONERS LEVY TAXES ON BEHALF OF THE DUCK AREA BEAUTIFICATION DISTRICT, WHICH IS A SPECIAL DISTRICT ESTABLISHED UNDER ARTICLE VII OF THE CONSTITUTION, NOT A SPECIAL TAX AREA.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 610 of the 1993 Session Laws reads as rewritten:

"Sec. 3. Tax Levy. -- If a majority of the qualified voters voting on the question in an election called under Section 1 of this act vote in favor of authorizing the levy and collection of ad valorem taxes in the district, the Dare County Board of Commissioners may levy on behalf of the district the

ad valorem tax on all taxable property in the district in an amount the Board considers necessary to construct the sidewalks within the district not to exceed five cents (5¢) for each one hundred dollars ($100.00) taxable valuation of property for two consecutive years beginning no later than the second fiscal year that begins after the election, and thereafter the Board may annually levy on behalf of the district an ad valorem tax in the amount necessary to maintain the sidewalks but not to exceed one cent (1¢) for each one hundred dollars ($100.00) taxable valuation of property. The proceeds of these taxes shall be used only to construct and maintain the sidewalks within the district."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of May, 1995.

S.B. 41 **CHAPTER 102**

AN ACT TO PROVIDE A PROCEDURE FOR ELIMINATING FRIVOLOUS LAWSUITS BY PRISONERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-110 reads as rewritten:

"*§ 1-110. Suit as an indigent: ~~counsel.~~ counsel; suits filed pro se by prison inmates.*

(a) Subject to the provisions of subsection (b) of this section with respect to prison inmates, any ~~Any~~ superior or district court judge or clerk of the superior court may authorize a person to sue as an indigent in their respective courts when the person makes affidavit that he or she is unable to advance the required court costs. The clerk of superior court shall authorize a person to sue as an indigent if the person makes the required affidavit and meets one or more of the following criteria:

(1) Receives food stamps.
(2) Receives Aid to Families with Dependent Children (AFDC).
(3) Receives Supplemental Security Income (SSI).
(4) Is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons.
(5) Is represented by private counsel working on the behalf of or under the auspices of a legal services organization under subdivision (4) of this section.

A superior or district court judge or clerk of superior court may authorize a person who does not meet one or more of these criteria to sue as an indigent if the person is unable to advance the required court costs. The court to which the summons is returnable may dismiss the case and charge the court costs to the person suing as an indigent if the allegations contained in the affidavit are determined to be untrue or if the court is satisfied that the action is frivolous or malicious.

(b) Whenever a motion to proceed as an indigent is filed pro se by an inmate in the custody of the Department of Correction, the motion to proceed as an indigent and the proposed complaint shall be presented to any

superior court judge of the judicial district. This judge shall determine whether the complaint is frivolous. In the discretion of the court, a frivolous case may be dismissed by order. The clerk of superior court shall serve a copy of the order of dismissal upon the prison inmate. If the judge determines that the inmate may proceed as an indigent, service of process upon the defendant shall issue without further order of the court."

Sec. 2. This act is effective upon ratification and applies to actions filed on or after that date.

In the General Assembly read three times and ratified this the 25th day of May, 1995.

S.B. 362

CHAPTER 103

AN ACT RELATING TO APPOINTMENTS TO THE SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION, AMENDING THE LAWS RELATING TO THE POWERS OF AND APPEALS BEFORE THE SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION, AND OTHERWISE PERTAINING TO CHAPTER 17E OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 17E-1 reads as rewritten:

"*§ 17E-1. Findings and policy.*

The General Assembly finds and declares that the office of sheriff, the office of deputy sheriff and the other officers and employees of the sheriff of a county are unique among all of the law-enforcement offices of North Carolina. The administration of criminal justice has been declared by Chapter 17C of the General Statutes to be of statewide concern to the people of the State. The sheriff is the only officer of local government required by the Constitution. The sheriff, in addition to his criminal justice responsibilities, is the only officer who is also responsible for the courts of the State, and acting as their bailiff and marshall. The sheriff administers and executes criminal and civil justice and acts as the ex officio ~~jailer,~~ detention officer.

The deputy sheriff has been held by the Supreme Court of this State to hold an office of special trust and confidence, acting in the name of and with powers coterminous with his principal, the elected sheriff.

The offices of sheriff and deputy sheriff are therefore of special concern to the public health, safety, welfare and morals of the people of the State. The training and educational needs of such officers therefore require particularized and differential treatment from those of the criminal justice officers certified under Chapter 17C of the General Statutes."

Sec. 2. G.S. 17E-2 reads as rewritten:

"*§ 17E-2. Definitions.*

Unless the context clearly requires otherwise, the following definitions apply to this Chapter:

(1) 'Commission' means the North Carolina Sheriffs' Education and Training Standards Commission.

(2) 'Office' or 'department' means the sheriff of a county, his deputies, his employees and such equipment, space, provisions and quarters as are supplied for their use.

(3) 'Justice officer' ~~or 'law-enforcement officer'~~ means a person who, through the special trust and confidence of the sheriff of the county, has taken the oath of office prescribed by Chapter 11 of these statutes as a peace officer in the office of a sheriff, or who has been duly appointed as a ~~jailer~~ detention officer by the sheriff. The term includes 'deputy sheriffs' and 'special deputy sheriffs' but does not include clerical and support personnel not required to take an oath. The term 'special deputy' means a person who, through appointment by the sheriff, becomes an unpaid criminal justice officer to perform a specific act directed to ~~him~~ the person by the sheriff. Justice officer shall also mean the administrator and the other custodial personnel of district confinement facilities as defined in G.S. 153A-219. Nothing in this Chapter shall transfer any supervisory or administrative control of employees of district confinement facilities to the office of the sheriff."

Sec. 3. Effective September 1, 1995, G.S. 17E-3 reads as rewritten:

"*§ 17E-3. North Carolina Sheriffs' Education and Training Standards Commission established; members; terms; vacancies.*

(a) There is hereby established the North Carolina Sheriffs' Education and Training Standards Commission. The Commission shall be composed of ~~16~~ 17 members as follows:

(1) Sheriffs. -- ~~Eleven sheriffs~~ Twelve sheriffs appointed by the North Carolina Sheriffs' Association, 10 representing each of the ~~Congressional districts appointed by the North Carolina Sheriffs' Association, in such manner as shall be prescribed by the Constitution or bylaws of such Association.~~ Commission Districts established in this section, and two appointed at large in such manner as shall be prescribed by the Constitution or bylaws of the Association.

(2) Appointees of the General Assembly. -- One person appointed by the Speaker of the House of Representatives pursuant to ~~Article 16, G.S. 120-121,~~ G.S. 120-121 and one person appointed by the Lieutenant Governor pursuant to ~~Article 16,~~ G.S. 120-121.

(3) County Commissioners. -- One county commissioner appointed by the Governor as recommended from three nominees from the North Carolina Association of County Commissioners.

(4) Others. -- The President of the Department of Community Colleges or his designee and the Director of the Institute of Government or his designee shall be ex officio, nonvoting members of the Commission.

(b) Terms. -- ~~Sheriffs representing Congressional Districts 1, 4, 7, and 10 as established and in effect for calendar year 1991, shall be appointed to a term of one year; sheriffs representing Congressional Districts 2, 5, 8, and 11 as established and in effect for calendar year 1991, shall be appointed to a term of two years; sheriffs representing Congressional Districts 3, 6, and 9 as established and in effect for calendar year 1991,~~

~~shall be appointed to a term of three years.~~ Members shall be appointed for staggered terms. Beginning September 1, 1995, sheriffs representing Commission Districts 3, 6, and 9 shall be appointed to three-year terms; sheriffs representing Commission Districts 1, 4, and 7 shall be appointed to one-year terms; sheriffs representing Commission Districts 2, 5, 8, and 10 and the two at-large sheriffs, shall be appointed to two-year terms. The appointee of the House of Representatives shall serve a term of two years. The appointee of the Senate shall serve a term of two years. The county commissioner appointed by the North Carolina Association of County Commissioners shall serve a term of two years. After the initial terms established herein have expired, all sheriffs appointed to the Commission shall be appointed to terms of three years.

If an individual ceases to be a sheriff then his seat on the Commission becomes vacated upon his ceasing to be qualified to hold that seat. Any individual appointed or designated to serve on this Commission shall serve until his successor is appointed and qualified.

(c) Vacancies. -- If any vacancy occurs in the membership of the Commission, the appointing authority shall appoint another person to fill the unexpired term of the vacating member.

(d) Compensation. -- None of the members of the Commission shall receive compensation for serving on the Commission. However, if the North Carolina Department of Justice has funds available, then members of the Commission who are State officers or employees may be reimbursed for their expenses in accordance with G.S. 138-6; members of the Commission who are full-time salaried public officers or employees other than State officers or employees may be reimbursed for their expenses in accordance with G.S. 138-5(b). All other members of the Commission may receive compensation and reimbursement for expenses in accordance with G.S. 138-5.

(e) Officers. -- The chairman shall be elected from among the membership. The Commission shall select its other officers from among the membership as it deems necessary. All officers serve for one year, or until successors are qualified.

(f) Removal. -- The Commission may remove a member for misfeasance, malfeasance, nonfeasance or neglect of duty.

(g) The Commission has power to adopt its own rules of procedure. The Commission shall meet no less than four times a year. It shall also meet on the call of the chairman or vice-chairman, or any four members of the Commission.

(h) The Commission may appoint any resident of the State to an adjunct or special committee created or appointed by it to study or make recommendations or reports on any subject matter related to its duties or the office of sheriff.

(i) Members of the Commission shall have the authority to designate, in writing, one member of his office to represent them and, if the member possesses voting authority, vote for them on the Commission at all meetings the voting member is unable to attend. This voting authority shall extend to all matters brought before the Commission which require a vote, to include the entry of final agency decisions and the adoption of administrative rules.

(j) The State is divided into 10 Commission Districts established for the appointment of members of the North Carolina Sheriffs' Education and Training Standards Commission as follows:

District 1: The Counties of Bertie, Camden, Chowan, Currituck, Gates, Hertford, Pasquotank, Perquimans, Tyrrell, and Washington.

District 2: The Counties of Caswell, Edgecombe, Franklin, Granville, Halifax, Nash, Northampton, Person, Vance, and Warren.

District 3: The Counties of Beaufort, Craven, Dare, Duplin, Hyde, Jones, Lenoir, Martin, Pamlico, and Pitt.

District 4: The Counties of Chatham, Durham, Greene, Harnett, Johnston, Lee, Orange, Wake, Wayne, and Wilson.

District 5: The Counties of Alleghany, Alexander, Ashe, Catawba, Gaston, Lincoln, Surry, Watauga, Wilkes, and Yadkin.

District 6: The Counties of Alamance, Davidson, Davie, Forsyth, Guilford, Iredell, Randolph, Rockingham, Rowan, and Stokes.

District 7: The Counties of Bladen, Brunswick, Carteret, Columbus, Cumberland, New Hanover, Onslow, Pender, Robeson, and Sampson.

District 8: The Counties of Anson, Cabarrus, Hoke, Mecklenburg, Montgomery, Moore, Richmond, Scotland, Stanly, and Union.

District 9: The Counties of Avery, Burke, Caldwell, Cleveland, Madison, McDowell, Mitchell, Polk, Rutherford, and Yancey.

District 10: The Counties of Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Swain, and Transylvania."

Sec. 4. G.S. 17E-4(a)(1) reads as rewritten:

"(1) Promulgate rules and regulations for the administration of this Chapter, which rules may require (i) the submission by any agency of information with respect to the employment, education, and training of its ~~law-enforcement~~ justice officers, and (ii) the submission by any training school of information with respect to its programs that are required by this Chapter;".

Sec. 5. G.S. 17E-4(b)(1) reads as rewritten:

"(1) Certify, pursuant to the standards that it has established for the purpose, ~~law-enforcement~~ justice officers for those law-enforcement agencies that elect to comply with the minimum education, training, and experience standards established by the Commission for positions for which advanced or specialized training, education, and experience are appropriate;".

Sec. 6. G.S. 17E-6(c)(8) reads as rewritten:

"(8) The director may divulge any information in the Division's personnel file of a ~~law-enforcement~~ justice officer or applicant for certification to the head of the department employing the officer or considering the applicant for employment when the director deems it necessary and essential to the retention or employment of said officer or applicant. The information may be divulged whether or not such information was contained in a personnel file maintained by a State or by a local government agency."

Sec. 7. G.S. 17E-7 reads as rewritten:

"*§ 17E-7. Required standards.*

(a) Justice officers shall not be required to meet any requirements of subsections (b) and (c) of this section as a condition of continued employment, nor shall failure of a justice officer to fulfill such requirements make him ineligible for any promotional examination for which he is otherwise eligible if the officer held an appointment prior to July 1, 1983, and is a sworn law-enforcement officer with power of arrest. The legislature finds, and it is hereby declared to be the policy of this Chapter, that such officers have satisfied such requirements by their experience. It is the intent of the Chapter that all ~~law-enforcement~~ justice officers employed at the entry level after the Commission has adopted the required standards shall meet the requirements of this Chapter. All justice officers who are exempted from the required entry level standards by this subsection are subject to the requirements of subsections (b) and (c) of this section as well as the requirements of G.S. 17E-4(a) in order to retain certification.

(b) The Commission shall provide, by regulation, that no person may be appointed as a ~~law-enforcement~~ justice officer at entry level, except on a temporary or probationary basis, unless such person has satisfactorily completed an initial preparatory program of training at a school certified by the Commission or has been exempted from that requirement by the Commission pursuant to this Chapter. Upon separation of a ~~law-enforcement~~ justice officer from a sheriff's department within the temporary or probationary period of appointment, the probationary certification shall be terminated by the Commission. Upon the reappointment to the same department or appointment to another department of an officer who has separated from a department within the probationary period, the officer shall be charged with the amount of time served during his initial appointment and allowed the remainder of the probationary period to complete the basic training requirement. Upon the reappointment to the same department or appointment to another department of an officer who has separated from a department within the probationary period and who has remained out of service for more than one year from the date of separation, the officer shall be allowed another probationary period to complete such training as the Commission shall require by rule for an officer returning to service.

(c) In addition to the requirements of subsection (b) of this section, the Commission, by rules and regulations, may fix other qualifications for the employment and retention of ~~law-enforcement~~ justice officers including minimum age, education, physical and mental standards, citizenship, good moral character, experience, and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of the office, and the Commission shall prescribe the means for presenting evidence of fulfillment of these requirements.

Where minimum educational standards are not met, yet the individual shows potential and a willingness to achieve the standards by extra study, they may be waived by the Commission for the reasonable amount of time it will take to achieve the standards required. Upon petition from a sheriff, the Commission may grant a waiver of any provisions of this section (17E-7) for any justice officer serving that sheriff.

(d) The Commission may issue a certificate evidencing satisfaction of the requirements of subsections (b) and (c) of this section to any applicant who

presents such evidence as may be required by its rules and regulations of satisfactory completion of a program or course of instruction in another jurisdiction."

Sec. 8. G.S. 17E-8 reads as rewritten:

"*§ 17E-8. Special requirements; authorizations.*

(a) Nothing in this Chapter shall be construed as a condition precedent to the taking of the oath of office or the exercise of the powers, duties or privileges of the offices of sheriff or ~~deputy,~~ justice officer.

(b) Any sheriff or ~~deputy sheriff,~~ justice officer, who has taken the oath of office, or person who has received a special deputation for the purpose from the sheriff, acts validly, and his arrests, executions, levies and sales are valid, without regard to whether he has complied with this Chapter or the rules or regulations adopted under this Chapter, unless he has been ordered to cease and desist from such actions by the court, or pursuant to G.S. 17E-9."

Sec. 9. G.S. 17E-9 reads as rewritten:

"*§ 17E-9. Compliance; enforcement.*

(a) Any ~~law-enforcement~~ justice officer ~~appointed on a temporary or probationary basis~~ who does not comply with the ~~training~~ provisions of this Chapter ~~within the probationary period of certification or any extension of such probationary period of certification authorized by the Commission,~~ shall not be authorized to exercise the powers of a ~~law-enforcement~~ justice officer and shall not be authorized to exercise the power of arrest unless such certification or deficiency has been waived by the Commission. The Commission shall enforce the provisions of ~~the subsection~~ this section by the entry of appropriate orders.

(b) Any person who desires to appeal the proposed denial, suspension, or revocation of any certification authorized to be issued by the Commission shall file a written appeal with the Commission not later than 30 days following notice of denial, suspension, or revocation.

(c) The Commission may appear in its own name and apply to courts having jurisdiction for injunctions to prevent violations of this Chapter or of rules issued pursuant thereto; specifically, the performance of justice officer functions by officers or individuals who are not in compliance with the standards and requirements of this Chapter or of rules issued pursuant thereto. A single act of performance of a justice officer function by an officer or individual who is performing such function in violation of this Chapter is sufficient, if shown, to invoke the injunctive relief of this section."

Sec. 10. Chapter 17E of the General Statutes is amended by adding a new section to read:

"*§ 17E-12. Pardons.*

When a person presents competent evidence that the person has been granted an unconditional pardon of innocence for a crime in this State, any other state, or the United States, the Commission may not deny, suspend, or revoke that person's certification based solely on the commission of that crime or for alleged lack of good moral character due to the commission of that crime."

Sec. 11. This act becomes effective September 1, 1995.

In the General Assembly read three times and ratified this the 25th day of May, 1995.

S.B. 535 **CHAPTER 104**

AN ACT TO ESTABLISH THE APPOINTIVE OFFICE OF TAX COLLECTOR FOR BUNCOMBE COUNTY AND THE CITY OF ASHEVILLE UPON THE EXPIRATION OF THE TERM OF THE PRESENT ELECTED TAX COLLECTOR AND TO AUTHORIZE THE JOINT OR SEPARATE APPOINTMENT OF A TAX COLLECTOR FOR THE COUNTY AND CITY.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 1279 of the 1981 Session Laws is repealed.

Sec. 2. The City of Asheville and the County of Buncombe shall appoint a Tax Collector in accordance with G.S. 105-349, upon the expiration of the term of the present Tax Collector.

Sec. 3. Nothing in this act shall be construed to require or prohibit the appointment of the same person to serve as Tax Collector for both the County of Buncombe and the City of Asheville.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of May, 1995.

S.B. 636 **CHAPTER 105**

AN ACT TO MODIFY THE DISTRIBUTION OF PROFITS FROM THE ABC SYSTEM IN THE CITY OF HENDERSONVILLE.

The General Assembly of North Carolina enacts:

Section 1. Section 6 of Chapter 954 of the 1955 Session Laws reads as rewritten:

"Sec. 6. The net profits derived from the operation of a liquor control store in the City of Hendersonville, after deducting the necessary funds for law enforcement as provided in G.S. 18B-805(c)(2), shall be divided as follows: Fifty per cent (50%) for municipality of Hendersonville. Twenty-five per cent (25%) to Governing Body of the County of Henderson. One per cent (1%) to the City Library. ~~Twelve per cent (12%) to the City of Henderson Board of Education. Twelve per cent (12%) to Henderson County Board of Education.~~ Twenty-four per cent (24%) to the Henderson County Public Schools. Such funds shall be subject to appropriation by the Governing Bodies of the City of Hendersonville and the County of Henderson for any lawful purpose."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of May, 1995.

S.B. 639 **CHAPTER 106**

AN ACT TO ALLOW THE CITY OF HENDERSONVILLE TO DONATE UNCLAIMED BICYCLES TO CHARITY.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 650 of the 1993 Session Laws reads as rewritten:

"Sec. 2. This act applies to the ~~City~~ Cities of Asheville and Hendersonville only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of May, 1995.

S.B. 640 **CHAPTER 107**

AN ACT CHANGING THE ELECTION OF MEMBERS OF THE MCDOWELL COUNTY BOARD OF EDUCATION FROM MAY TO NOVEMBER.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 322 of the 1987 Session Laws reads as rewritten:

"Section 1. Notwithstanding the provisions of G.S. 115C-37, the McDowell County Board of Education shall be elected on a nonpartisan basis at the time ~~of the primary~~ set by G.S. 163-1 for the general election in ~~1988~~ 1996 and biennially thereafter. The names of the candidates shall be printed on the ballot without reference to any party affiliations. The nonpartisan ~~election and runoff~~ plurality election method shall be used with the results determined as provided in ~~G.S. 163-293, except that the runoff shall be held on the date provided by G.S. 163-111(e).~~ G.S. 163-292."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of May, 1995.

S.B. 871 **CHAPTER 108**

AN ACT TO PROVIDE FOR THE APPOINTMENT AND ASSIGNMENT OF EMERGENCY RECALL JUDGES OF THE COURT OF APPEALS.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"*§ 7A-39.15. Emergency recall judges of the Court of Appeals.*

(a) A retired justice or judge of the Appellate Division of the General Court of Justice is eligible to be appointed as an emergency recall judge of the Court of Appeals under the following circumstances:

(1) The justice or judge has retired under the provisions of the Consolidated Judicial Retirement Act, Article 4 of Chapter 135 of

the General Statutes, or is eligible to receive a retirement allowance under that act;

(2) The justice or judge has not reached the mandatory retirement age specified in G.S. 7A-4.20;

(3) The justice or judge has served a total of at least five years as a judge or justice of the General Court of Justice, provided that at least six months was served in the Appellate Division, whether or not otherwise eligible to serve as an emergency justice or judge of the Appellate Division of the General Court of Justice;

(4) The judicial service of the justice or judge ended within the preceding 15 years; and

(5) The justice or judge has applied to the Governor for appointment as an emergency recall judge of the Court of Appeals in the same manner as is provided for application in G.S. 7A-53. If the Governor is satisfied that the applicant meets the requirements of this section and is physically and mentally able to perform the duties of a judge of the Court of Appeals, the Governor shall issue a commission appointing the applicant as an emergency recall judge of the Court of Appeals until the applicant reaches the mandatory retirement age for judges of the Court of Appeals specified in G.S. 7A-4.20.

Any former justice or judge of the Appellate Division of the General Court of Justice who otherwise meets the requirements of this section to be appointed an emergency recall judge of the Court of Appeals, but who has already reached the mandatory retirement age for judges of the Court of Appeals set forth in G.S. 7A-4.20, may apply to the Governor to be appointed as an emergency recall judge of the Court of Appeals as provided in this section. If the Governor issues a commission to the applicant, the retired justice or judge is subject to recall as an emergency recall judge of the Court of Appeals as provided in this section.

(b) Notwithstanding any other provision of law, the Chief Judge of the Court of Appeals may recall and assign one or more emergency recall judges of the Court of Appeals, not to exceed three at any one time, provided funds are available, if the Chief Judge determines that one or more emergency recall judges of the Court of Appeals are necessary to discharge the court's business expeditiously.

(c) Any emergency recall judge of the Court of Appeals appointed as provided in this section shall be subject to recall in the following manner:

(1) The judge shall consent to the recall;

(2) The Chief Judge of the Court of Appeals may order the recall;

(3) Prior to ordering recall, the Chief Judge of the Court of Appeals shall be satisfied that the recalled judge is capable of efficiently and promptly discharging the duties of the office to which recalled;

(4) Orders of recall and assignment shall be in writing, evidenced by a commission signed by the Chief Judge of the Court of Appeals, and entered upon the minutes of the permanent records of the Court of Appeals;

(5) Compensation, expenses, and allowances of emergency recall judges of the Court of Appeals are the same as for recalled emergency superior court judges under G.S. 7A-52(b);

(6) Emergency recall judges assigned under those provisions shall have the same powers and duties, when duly assigned to hold court, as provided for by law for judges of the Court of Appeals;

(7) Emergency recall judges of the Court of Appeals are subject to assignment in the same manner as provided for by G.S. 7A-16 and G.S. 7A-19;

(8) Emergency recall judges of the Court of Appeals shall be subject to rules adopted pursuant to G.S. 7A-39.8 regarding the filing of opinions and other matters;

(9) Emergency recall judges of the Court of Appeals shall be subject to the provisions and requirements of the Canons of Judicial Conduct during the term of assignment; and

(10) An emergency recall judge of the Court of Appeals shall not engage in the practice of law during any period for which the emergency recall Court of Appeals judgeship is commissioned. However, this subdivision shall not be construed to prohibit an emergency recall judge of the Court of Appeals appointed pursuant to this section from serving as a referee, arbitrator, or mediator during service as an emergency recall judge of the Court of Appeals so long as the service does not conflict with or interfere with the judge's service as an emergency recall judge of the Court of Appeals.

(d) A justice or judge commissioned as an emergency recall judge of the Court of Appeals is also eligible to receive a commission as an emergency special superior court judge. However, no justice or judge who has been recalled as provided in this section shall, during the period so recalled and assigned, contemporaneously serve as an emergency special superior court judge or emergency justice of the General Court of Justice."

Sec. 2. G.S. 7A-39.1(b) reads as rewritten:

"(b) As used herein, 'emergency ~~justice' or~~ justice', 'emergency ~~judge'~~ judge', or 'emergency recall judge' means any justice of the Supreme Court or any judge of the Court of Appeals, respectively, who has retired subject to recall for temporary service."

Sec. 3. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 25th day of May, 1995.

H.B. 213 **CHAPTER 109**

AN ACT CONCERNING THE COLLECTION OF DELINQUENT TRUCK PENALTIES AND ASSESSED TAXES AND THE CONSOLIDATION OF THE VARIOUS PROVISIONS CONCERNING OVERWEIGHT VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-88 is amended by adding a new subsection to read:

"(k) A person may not drive a vehicle on a highway if the vehicle's gross weight exceeds its declared gross weight. A vehicle driven in violation of this subsection is subject to the axle-group weight penalties set in G.S. 20-118(e). The penalties apply to the amount by which the vehicle's gross weight exceeds its declared weight."

Sec. 2. G.S. 20-96 reads as rewritten:

"§ 20-96. ~~*Overloading.*~~ *Collection of delinquent penalties and taxes.*

~~It is the intent of this section that every owner of a motor vehicle shall procure license in advance to cover the empty weight and maximum load which may be carried. Any owner failing to do so, and whose vehicle shall be found in operation on the highway over the weight for which such vehicle is licensed, shall pay the penalties prescribed in G.S. 20-118(e)(3). Nonresidents operating under the provisions of G.S. 20-83 shall be subject to the additional tax provided in this section when their vehicles are operated in excess of the licensed weight or, regardless of the licensed weight, in excess of the maximum weight provided for in G.S. 20-118. Any resident or nonresident owner of a vehicle that is found in operation on a highway designated by the Board of Transportation as a light traffic highway, and along which signs are posted showing the maximum legal weight on said highway with a load in excess of the weight posted for said highway, shall be subject to the penalties provided in G.S. 20-118(e)(1). Any person who shall willfully violate the provisions of this section shall be guilty of a Class 2 misdemeanor in addition to being liable for the additional tax herein prescribed.~~

~~Any peace~~ A law enforcement officer who discovers that a ~~property-hauling~~ vehicle used for the transportation of property is being operated on the highways ~~with an overload as described in this section or which is equipped with improper registration plates, or the owner of which is liable for any overload penalties or assessments applicable to the vehicle and due and unpaid for more than 30 days, is hereby authorized to seize said property-hauling vehicle and hold the same until the overload has been removed or proper registration plates therefor have been secured and attached thereto and the penalties owed under this section and G.S. 20-118.3 have been paid. Any peace officer seizing a property-hauling vehicle under this provision, may, when necessary, store said vehicle and the owner thereof shall be responsible for all reasonable storage charges thereon. When any property-hauling vehicle is seized, held, unloaded or partially unloaded under this provision, the load or any part thereof shall be cared for by the owner or operator of the vehicle without any liability on the part of the officer or of the State or any municipality because of damage to or loss of such load or any part thereof,~~ and that the owner of the vehicle is more than 30 days overdue in paying any of the following may detain the vehicle:

(1) A penalty previously assessed under this Chapter against the owner for a violation attributable to the failure of a vehicle to comply with this Chapter.

(2) A tax or penalty previously assessed against the owner under Article 36B of Chapter 105 of the General Statutes.

The officer may detain the vehicle until the delinquent penalties and taxes are paid. When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State is not liable for damage to or loss of the property being hauled."

Sec. 3. G.S. 20-118(e)(3) reads as rewritten:

"(3) Except as provided in subdivision (4) of this subsection, for a violation of an axle-group weight limit set in subdivision (b)(3) or (b)(4) of this section, the Department of Transportation shall assess a civil penalty against the owner or registrant of the motor vehicle in accordance with the following schedule: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. These penalties apply separately to each axle-group weight limit violated. The penalty shall be assessed on each pound of weight in excess of the maximum permitted."

Sec. 4. G.S. 20-118.1 reads as rewritten:

"*§ 20-118.1. ~~Peace officer may weigh vehicle and require removal of excess load; refusal to permit weighing.~~ Officers may weigh vehicles and require overloads to be removed.*

~~Any peace officer having reason to believe that the weight of a vehicle and load is unlawful is authorized to weigh the same either by means of North Carolina Department of Transportation portable or stationary scales, and may require that such vehicle be driven to the nearest North Carolina Department of Transportation stationary scales or stationary scales approved by the North Carolina Department of Agriculture in the event such scales are within five miles. The officer may then require the driver to unload immediately such portion of the load as may be necessary to decrease the gross weight of such vehicle to the maximum therefor specified in this Article. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator. Any person who refuses to permit a vehicle being operated by him to be weighed as in this section provided or who refuses to drive said vehicle upon the scales provided for weighing for the purpose of being weighed, shall be guilty of a Class 2 misdemeanor. No vehicle more than two miles from a North Carolina Department of Transportation stationary scales may be required to be driven to such scales unless the peace officer knows or reasonably suspects the vehicle has driven so as to avoid being weighed at the scales.~~

A law enforcement officer may stop and weigh a vehicle to determine if the vehicle's weight is in compliance with the vehicle's declared gross weight and the weight limits set in this Part. The officer may require the driver of the vehicle to drive to a scale located within five miles of where the officer stopped the vehicle.

If the vehicle's weight exceeds the amount allowable, the officer may detain the vehicle until the overload has been removed. Any property removed from a vehicle because the vehicle was overloaded is the

responsibility of the owner or operator of the vehicle. The State is not liable for damage to or loss of the removed property.

Failure to permit a vehicle to be weighed or to remove an overload is a misdemeanor of the Class set in G.S. 20-176. An officer must weigh a vehicle with a scale that has been approved by the Department of Agriculture."

Sec. 5. G.S. 20-183.11 is repealed.

Sec. 6. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 25th day of May, 1995.

H.B. 373 **CHAPTER 110**

AN ACT TO PROHIBIT THE RUNNING OF DEER BY DOGS IN THE TOWN OF SOUTHERN SHORES AND TO PROHIBIT THE TAKING OF DEER WITH DOGS IN A PORTION OF RICHMOND COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 585 of the 1993 Session Laws reads as rewritten:

"Sec. 4. This act applies only to the Towns of Kitty ~~Hawk and~~ Hawk, Nags ~~Head.~~ Head, and Southern Shores."

Sec. 2. Section 4 of Chapter 869 of the 1986 Session Laws reads as rewritten:

"Sec. 4. This act applies only to that part of Richmond County west of the Little ~~River.~~ River and to that portion of Richmond County east of the Little River and bounded by Highway 73 to the north, by Hough Road to the east, and by Grassy Island Road to the south."

Sec. 3. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 25th day of May, 1995.

S.B. 295 **CHAPTER 111**

AN ACT TO ENACT A RECOMMENDATION OF THE CHILD FATALITY TASK FORCE TO CLARIFY THE AUTHORITY OF THE BUILDING CODE COUNCIL TO ADOPT PROVISIONS REQUIRING THE INSTALLATION OF SMOKE DETECTORS IN ALL RESIDENTIAL RENTAL PROPERTY AND TO PROVIDE FOR MUTUAL OBLIGATIONS BETWEEN LANDLORDS AND TENANTS REGARDING THE INSTALLATION AND UPKEEP OF SMOKE DETECTORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-138(b) reads as rewritten:

"(b) Contents of the Code. -- The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor

areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building rules applicable to farm buildings located outside the building-rules jurisdiction of any municipality.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules.

(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any rules relating to sanitation adopted by the Commission for Health Services or the Department of Environment, Health, and Natural Resources which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements."

Sec. 2. G.S. 42-42(a) reads as rewritten:

"(a) The landlord shall:

(1) Comply with the current applicable building and housing codes, whether enacted before or after October 1, 1977, to the extent required by the operation of such codes; no new requirement is imposed by this subdivision (a)(1) if a structure is exempt from a current building code;

(2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(3) Keep all common areas of the premises in safe condition; ~~and~~

(4) Maintain in good and safe working order and promptly repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances supplied or required to be supplied by him provided that notification of needed repairs is made to the landlord in writing by the tenant except in emergency ~~situations,~~ situations; and

(5) Provide operable smoke detectors, either battery-operated or electrical, having an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, that are installed in accordance with either the standards of the National

Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the landlord shall retain or provide as proof of compliance. The landlord must replace or repair the smoke detectors provided the landlord is notified of needed replacement or repairs in writing by the tenant. Unless the landlord and the tenant have a written agreement to the contrary, the landlord must place new batteries in a battery-operated smoke detector at the beginning of a tenancy and the tenant must replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord."

Sec. 3. G.S. 42-43(a) reads as rewritten:

"(a) The tenant shall:

(1) Keep that part of the premises which he occupies and uses as clean and safe as the conditions of the premises permit and cause no unsafe or unsanitary conditions in the common areas and remainder of the premises which he uses;

(2) Dispose of all ashes, rubbish, garbage, and other waste in a clean and safe manner;

(3) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(4) Not deliberately or negligently destroy, deface, damage, or remove any part of the ~~premises~~ premises, nor render inoperable the smoke detector provided by the landlord, or knowingly permit any person to do so;

(5) Comply with any and all obligations imposed upon the tenant by current applicable building and housing codes; ~~and~~

(6) Be responsible for all damage, defacement, or removal of any property inside a dwelling unit in his exclusive control unless said damage, defacement or removal was due to ordinary wear and tear, acts of the landlord or his agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural ~~forces.~~ forces; and

(7) Notify the landlord of the need for replacement of or repairs to a smoke detector. Nothing in this bill shall prohibit an individual landlord in a written agreement with the tenant from requiring the tenant to provide notice in writing of the need for replacement of or repairs to a smoke detector. Unless the landlord and the tenant have a written agreement to the contrary, the landlord must place new batteries in a battery-operated smoke detector at the beginning of a tenancy and the tenant must replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord."

Sec. 4. The amendment to G.S. 143-138(b) contained in Section 1 of this act shall not be construed to imply that the Building Code Council did not possess the authority contained in that amendment prior to the effective date of Section 1 of this act.

Sec. 5. Sections 2 and 3 of this act become effective January 1, 1996, and apply to residential rental agreements in effect on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1995.

S.B. 583 **CHAPTER 112**

AN ACT TO ALLOW PERSONAL REPRESENTATIVES OF ESTATES IN THE CITY OF WINSTON-SALEM TO EXPEND ESTATE ASSETS TO PREVENT THE WASTE OF REAL PROPERTY BELONGING TO THE ESTATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-13-3(a)(16) reads as rewritten:

"(16) To pay taxes, assessments, his own compensation, and other expenses incident to the collection, care, administration and protection of the assets of the estate in his possession, custody or control. With regard to real property of the estate, the personal representative or public administrator may expend estate assets to prevent waste of that real property by complying with Part 6 of Article 19 of Chapter 160A of the General Statutes, Minimum Housing Standards, or any ordinance or order adopted pursuant that Part."

Sec. 2. This act applies only to real property located in the City of Winston-Salem.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1995.

S.B. 654 **CHAPTER 113**

AN ACT AUTHORIZING A ONE-STEP SERVICE PROCESS IN SPECIFIED HOUSING CODE CASES IN THE CITY OF ASHEVILLE.

The General Assembly of North Carolina enacts:

Section 1. (a) A city council may adopt an ordinance providing for a procedure whereby, whenever it appears to the public officer, as defined in G.S. 160A-442, that any dwelling is extremely dilapidated and meets the following conditions:

(1) It has been determined by the public officer to be either:
   a. At least fifty per cent (50%) destroyed by fire or other casualty, or
   b. Unable to be repaired, altered, or improved to comply with all of the standards established by the city housing code at a cost of less than seventy-five percent (75%) of its value;
(2) It is not occupied; and
(3) Any other conditions deemed reasonably necessary by the governing body.

the public officer may serve the property owner and parties in interest with a notice of violation of the housing code and set a date not less than 30 days from the date of service of the notice within which the property owner shall either commence rehabilitation so as to bring the dwelling into compliance with the housing code or commence demolition proceedings. The notice shall also inform the property owner that if corrections or demolition proceedings are not commenced within the time period specified, the public officer shall, without further notice or further request of the governing body, cause the demolition of the dwelling and place a lien against the property as set forth in subsection (b) of this section.

(b) If the property owner or party in interest submits written objection to the public officer proceeding against the dwelling within the time period specified in the notice of violation, the public officer shall cease any further efforts at compliance under this section but may proceed in accordance with other applicable law. If the property owner or party in interest does not submit written objection to the public officer proceeding against the dwelling within the time period specified in the notice of violation, the public officer shall document that the conditions set forth in subsection (a) of this section exist, enter an order to that effect and cause the dwelling to be demolished. The public officer shall be under no further obligation to notify or serve the property owner or party in interest where there is no written objection. The amount of the cost of demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of the General Statutes.

(c) Civil actions against the city for proceeding under this section must be filed within nine months from the date the violation notice is served upon the aggrieved party.

Sec. 2. This act applies to the City of Asheville only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1995.

H.B. 47 **CHAPTER 114**

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE LAW REGARDING THE LICENSING OF ELECTRICAL CONTRACTORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-39 reads as rewritten:

"*§ 87-39. Board of Examiners; appointment; terms; ~~chairman;~~ chair; meetings; quorum; principal office; compensation; oath.*

(a) The State Board of Examiners of Electrical Contractors shall continue as the State agency responsible for the licensing of persons engaging in electrical contracting within this State, and shall consist of one member from the North Carolina Department of Insurance to be designated by the Commissioner of Insurance; one member who has satisfied the requirements for an unlimited license as defined in G.S. 87-43.3 and who is a representative of the North Carolina Association of Electrical Contractors to

be designated by the governing body of that organization; and five members to be appointed by the Governor: one from the faculty of The Greater University of North Carolina who teaches or does research in the field of electrical engineering, one who is serving as a chief electrical inspector of a municipality or county in North Carolina, one who has satisfied the requirements for an unlimited license as defined in G.S. 87-43.3 and who is a representative of the Carolinas Electrical Contractors Association operating a sole proprietorship, partnership or corporation located in North Carolina which is actively engaged in the business of electrical contracting, and two who have no ties with the construction industry and who represent the interest of the public at large. ~~The terms of all members shall be seven years and until their successors are designated or appointed and are qualified. A vacancy occurring during a term shall be filled for the remainder of the unexpired term by the authority which designated or appointed the member to the seat being vacated. All members shall be citizens of North Carolina and reside in North Carolina during their tenure on the Board. No member shall serve two complete consecutive terms.~~

(b) Members of the Board shall serve staggered seven-year terms. Each member shall serve until his or her successor is designated or appointed, and is duly qualified. Vacancies occurring during a term shall be filled for the remainder of that term by the authority that designated or appointed the departing member.

(c) Members of the Board shall not serve consecutive, complete terms. For purposes of this subsection, only a term of less than seven years that results from the filling of a vacancy is an incomplete term; a term of less than seven years that results from the successor's late designation or appointment is not an incomplete term.

(d) All members shall be residents of North Carolina during their tenure on the Board. Any member of the Board may be removed by the authority that designated or appointed that member for misconduct, incompetency, or neglect of duty.

(e) The Board shall hold regular meetings quarterly and may hold meetings on call of the ~~chairman.~~ chair. The ~~chairman~~ chair shall be required to call a special meeting upon written request by two members of the Board. ~~The Board shall, at the first meeting following appointment of the new member in each year, meet and elect from its membership a chairman and vice-chairman, each to serve for one year.~~ At its regular first quarter meeting, the Board shall elect from its membership a chair and a vice-chair, each to serve for one year. Four members of the Board shall constitute a quorum. The principal office of the Board shall be at such place as shall be designated by a majority of the members thereof. Payment of compensation and reimbursement of expenses of Board members shall be governed by G.S. 93B-5.

(f) Before entering upon the performance of his or her duties hereunder, each member of the Board shall take and file with the Secretary of State an oath in writing to properly perform the duties of his or her office as a member of ~~said~~ the Board, and to uphold the Constitution of North Carolina and the Constitution of the United States."

Sec. 2. G.S. 87-40 reads as rewritten:

"*§ 87-40. Secretary-treasurer.*

~~The State Board of Examiners of Electrical Contractors shall at its first meeting following appointment of the new member in each year appoint a secretary-treasurer for a period of one year.~~ At its regular first quarter meeting, the Board shall appoint a secretary-treasurer to serve for one year. The secretary-treasurer need not be a member of the Board, and the Board is authorized to employ a full-time secretary-treasurer and such other assistants and to make such other expenditures as may be necessary to the proper performance of the duties of the Board under this Article. The compensation and the duties of the secretary-treasurer shall be fixed by the Board, and the secretary-treasurer shall give bond in such sum and form as the Board shall require for the faithful performance of ~~his duties.~~ duty. The secretary-treasurer shall keep a record of the proceedings of said Board and shall receive and account for all moneys derived from the operations of the Board under this Article."

Sec. 3. G.S. 87-43.4 reads as rewritten:

"*§ 87-43.4. Residential dwelling license.*

There is hereby created a separate license for electrical contractors which shall permit an electrical contractor to engage in electrical contracting projects pertaining to single-family detached residential dwellings. The value of a single project pertaining to a single-family detached residential dwelling shall not be in excess of the maximum value, established in G.S. 87-43.3, of a single project engaged in by a licensee with a license classified as limited. The Board shall establish appropriate standards for this new license. The standards of knowledge, experience and proficiency shall be those appropriate for that license."

Sec. 4. G.S. 87-47 reads as rewritten:

"*§ 87-47. ~~Jurisdiction of Board.~~ Penalties imposed by Board; enforcement procedures.*

(a) Repealed by Session Laws 1989, c. 709, s. 9.

(a1) ~~In the interest of protecting the public, whenever the Board finds that (i) an applicant for certification as a qualified individual, (ii) an applicant for a license, (iii) an applicant for a renewal of a license, (iv) a qualified individual, or (v) a person, partnership, firm or corporation to whom or to which a certification or license has been issued, is guilty of one or more of the following:~~ The following activities are prohibited:

(1) Offering to engage or engaging in electrical contracting without being ~~licensed;~~ licensed.

(2) Selling, transferring, or assigning a license, regardless of whether for a ~~fee;~~ fee.

(3) Aiding or abetting an unlicensed person, partnership, firm, or corporation to offer to engage or to engage in electrical ~~contracting;~~ contracting.

(4) ~~A~~ Being convicted of a crime involving fraud or moral ~~turpitude by conviction thereof;~~ turpitude.

(5) ~~Fraud or misrepresentation in obtaining a certification, in obtaining or renewing a license, or in the practice of electrical contracting;~~ Engaging in fraud or misrepresentation to obtain a

certification, obtain or renew a license, or practice electrical contracting.

(6) ~~False~~ Engaging in false or misleading ~~advertising; or~~ advertising.

(7) ~~Malpractice.~~ Engaging in malpractice, unethical conduct, fraud, deceit, gross negligence, gross incompetence, or gross misconduct in the practice of electrical ~~contracting;~~ contracting.

~~the Board may refuse or revoke certification as a qualified individual, or may refuse to issue or renew a license.~~

(a2) ~~In addition to the administrative action authorized by subdivision (a1) above, the~~ The Board may administer one or more of the following penalties if the applicant, licensee, or qualified individual ~~is found to be guilty of one or more of the acts listed in subdivision (a1);~~ has engaged in any activity prohibited under subsection (a1) of this section:

(1) ~~Reprimand;~~ Reprimand.

(2) Suspension from practice for a period not to exceed 12 ~~months;~~ months.

(3) Revocation of the right to serve as a listed qualified individual on any license issued by the ~~Board;~~ Board.

(4) Revocation of ~~license; and~~ license.

(5) Probationary revocation of license or the right to serve as a listed qualified individual on any license issued by the Board, upon conditions set by the Board as the case ~~shall warrant, with~~ warrants, and revocation upon failure to comply with the conditions.

(6) Revocation of certification.

(7) Refusal to certify an applicant or a qualified individual.

(8) Refusal to issue a license to an applicant.

(9) Refusal to renew a license.

(a3) In addition to administering a penalty under subsection (a2) of this section, the Board may assess a civil penalty of not more than one thousand dollars ($1,000) against a licensee or a qualified individual who has engaged in an activity prohibited under subsection (a1) of this section or has violated another provision of this Article or a rule adopted by the Board. Civil penalties collected under this subsection shall be deposited in the General Fund of North Carolina as nontax revenue.

In determining the amount of a civil penalty, the Board shall consider:

(1) The degree and extent of harm to the public safety or to property, or the potential for harm.

(2) The duration and gravity of the violation.

(3) Whether the violation was committed willfully or intentionally, or reflects a continuing pattern.

(4) Whether the violation involved elements of fraud or deception either to the public or to the Board, or both.

(5) The violator's prior disciplinary record with the Board.

(6) Whether and the extent to which the violator profited by the violation.

~~(a3)~~ (a4) ~~The Board shall, in accordance with Chapter 150B of the General Statutes, formulate rules of procedure governing the hearings of charges against applicants, qualified individuals and licensees.~~ Any ~~person~~

person, including the Board and its staff on their own initiative, may prefer charges ~~against any applicant, qualified individual, or licensee,~~ pursuant to this section, and such charges must be ~~sworn to by the complainant and~~ submitted in writing to the Board. The Board may, without a hearing, dismiss charges as unfounded or trivial. The Board may issue a notice of violation based on the charges, to be served by a member of the Board's staff or in accordance with Rule 4 of the Rules of Civil Procedure, against any person, partnership, firm, or corporation for engaging in an activity prohibited under subsection (a1) of this section or for a violation of the provisions of this Article or any rule adopted by the Board. The person or other entity to whom the notice of violation is issued may request a hearing by notifying the Board in writing within 20 days after being served with the notice of violation. Hearings shall be conducted by the Board or an administrative law judge pursuant to Article 3A of Chapter 150B of the General Statutes. In conducting ~~hearings of charges,~~ hearings, the Board may remove the hearings to any county in which the offense, or any part thereof, was committed if in the opinion of the Board the ends of justice or the convenience of witnesses require such removal.

(a5) If the person or other entity does not request a hearing under subsection (a4) of this section, the Board shall enter a final decision and may impose penalties against the person or other entity. If the person or other entity is not a licensee or a qualified individual, the Board may impose penalties under subsection (a2) of this section. If the person or other entity is a licensee or a qualified individual, the Board may impose penalties under subsection (a2) of this section, subsection (a3) of this section, or both.

(b) The Board shall adopt and publish rules, in accordance with Chapter 150B of the General Statutes and consistent with the provisions of this Article, governing the matters contained in this section.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding ~~complaints~~ charges and notices of violation ~~against each applicant, qualified individual and licensee,~~ pursuant to this section. This record shall include, for each person, partnership, firm, and corporation charged or notified of a violation, ~~applicant, qualified individual and licensee,~~ the date and nature of each ~~complaint,~~ charge or notice of violation, investigatory action taken by the Board, any findings by the Board, and the disposition of the matter.

(d) The Board may reinstate a qualified individual's certification and may reinstate a license after having revoked it, provided that one year has elapsed from revocation until reinstatement and that the vote of the Board for reinstatement is by a majority of its members.

The Board shall immediately notify the Secretary of State and the electrical inspectors within the licensee's county of residence upon the revocation of a license or the reissuance of a license which had been revoked.

(e) In any case in which the Board is entitled to convene a hearing to consider ~~a charge under this section,~~ imposing any penalty provided for in subsection (a2) or (a3) of this section, the Board may accept an offer in compromise of the charge, whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000). ~~All such penalties~~

Penalties collected by the Board under this subsection shall be deposited in the General Fund of North ~~Carolina.~~ Carolina as nontax revenue."

Sec. 5. Notwithstanding the provisions of G.S. 87-39 to the contrary, the terms of the members serving on the Board on the effective date of this section shall, in order to establish a staggered term system, expire upon completion of those terms and the following shall apply for the following appointments: the term of one member who represents the interest of the public at large shall expire June 30, 2004; the term of the member who is a representative of the North Carolina Association of Electrical Contractors shall expire June 30, 2005; the term of the member who is serving as a chief electrical inspector of a municipality or county in North Carolina shall expire June 30, 2006; and the remaining appointments shall expire seven years after their successors' terms expire. Thereafter all terms shall be seven years in accordance with the provisions of G.S. 87-39, as amended by Section 1 of this act.

Members serving terms less than seven years for the purpose of establishing staggered terms under this section are not serving complete terms for purposes of G.S. 87-39(e), as amended by Section 1 of this act, and are eligible for redesignation or appointment to the Board.

Sec. 6. G.S. 87-43.3 reads as rewritten:

"*§ 87-43.3. Classification of licenses.*

An electrical contracting license shall be issued in one of the following classifications: Limited, under which a licensee shall be permitted to engage in a single electrical contracting project of a value not in excess of ~~seventeen thousand five hundred dollars ($17,500)~~ twenty-five thousand dollars ($25,000) and on which the equipment or installation in the contract is rated at not more than 600 volts; Intermediate, under which a licensee shall be permitted to engage in a single electrical contracting project of a value not in excess of seventy-five thousand dollars ($75,000); Unlimited, under which a licensee shall be permitted to engage in any electrical contracting project regardless of value; and such other special Restricted classifications as the Board may establish from time to time to provide, (i) for the licensing of persons, partnerships, firms or corporations wishing to engage in special restricted electrical contracting, under which license a licensee shall be permitted to engage only in a specific phase of electrical contracting of a special, limited nature, and (ii) for the licensing of persons, partnerships, firms or corporations wishing to engage in electrical contracting work as an incidental part of their primary business, which is a lawful business other than electrical contracting, under which license a licensee shall be permitted to engage only in a specific phase of electrical contracting of a special, limited nature directly in connection with said primary business. The Board may establish appropriate standards for each classification, such standards not to be inconsistent with the provisions of G.S. 87-42."

Sec. 7. Sections 1 and 5 of this act become effective January 1, 1997. Sections 3 and 6 of this act become effective July 1, 1995, and apply to electrical contracting projects commenced on or after that date. The remaining sections of this act become effective December 1, 1995.

In the General Assembly read three times and ratified this the 29th day of May, 1995.

H.B. 97 **CHAPTER 115**

AN ACT TO REMOVE THE SUNSET ON REVERSE MORTGAGES.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 546 of the 1991 Session Laws reads as rewritten:

"Sec. 3. This act becomes effective October 1, 1991. ~~This act expires October 1, 1995. No reverse mortgage loan may be made on or after the date the act expires. The expiration of the act does not affect the validity of a reverse mortgage loan made before the date of expiration.~~"

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1995.

H.B. 235 **CHAPTER 116**

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO LAWS CONCERNING THE SCHOOL ADMINISTRATOR STANDARDS BOARD AND TO EXTEND TO 1998 THE DATE FOR IMPLEMENTATION OF THE STANDARDS BOARD EXAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-290.2 reads as rewritten:

"*§ 115C-290.2. Definitions.*

The following definitions apply in this Article:

(1) Standards Board. -- The North Carolina Standards Board for Public School Administration.

(2) Exam. -- The North Carolina Public School Administrator Exam.

(3) School administrator. -- Public school superintendents, deputy superintendents, associate superintendents, assistant superintendents, principals, and assistant principals."

Sec. 2. G.S.115C-290.3 reads as rewritten:

"*§ 115C-290.3. False representation ~~of qualifications~~ prohibited.*

It is unlawful for a person whom the Standards Board has not ~~qualified~~ recommended for certification as a public school administrator to represent himself or herself as having been ~~qualified~~ recommended by the Standards Board or to hold himself or herself out to the public by any title or description denoting that he or she has been ~~qualified~~ recommended by the Standards ~~Board.~~ Board for certification. A person who violates this section is guilty of a Class 2 misdemeanor."

Sec. 2.1. G.S. 115C-290.4 reads as rewritten:

"*§ 115C-290.4. North Carolina Standards Board for Public School Administration; appointments; terms; composition.*

(a) The North Carolina Standards Board for Public School Administration is created. The Standards Board shall be located for administrative purposes in the Office of the Governor. The Standards Board shall exercise its powers independently of that Office.

(b) The Standards Board shall consist of seven members appointed by the Governor as follows:

(1) Two local superintendents employed by a local school administrative unit.
(2) Three principals employed by a local school administrative unit.
(3) One dean of a school of education or a designee.
(4) One representative of the public at large.

Composition of the Standards Board as to the race and sex of its members shall reflect the composition of the population of the State. Members of the Standards Board shall be residents of the State and shall each reside in a different congressional district.

With the exception of the member representing the public at large, each member must be qualified under this Article, and must be actively engaged in the practice of public school administration or in the education and training of students in public school administration. Before their appointment to the Standards Board, these professional Standards Board members must have been actively engaged in the practice of public school administration or in the education and training of students in public school administration for at least three years, at least two of which occurred primarily in this State.

(c) The Governor may only remove a member of the Standards Board for neglect of duty, malfeasance, or conviction of a felony or other crime of moral turpitude.

(d) Effective July 1, 1993, the Governor shall appoint one superintendent, two principals, and the dean of a school of education for terms of three years, and one superintendent, one principal, and the representative of the public for terms of two years. Thereafter the terms shall be for three years. Each term of service on the Standards Board shall expire on the 30th day of June of the year in which the term expires. No member shall serve more than two consecutive three-year terms. As the term of a member expires, the Governor shall make the appointment for a full term, or, if a vacancy occurs for any other reason, for the remainder of the unexpired term.

(e) Members of the Standards Board shall receive compensation for their services and reimbursement for expenses incurred in the performance of duties required by this Article, at the rates prescribed in G.S. 93B-5.

(f) The Standards Board shall elect from its membership a chairperson, a vice-chairperson, and a secretary-treasurer, and adopt rules to govern its proceedings. All members are voting members, and a majority of the membership constitutes a quorum.

(g) The Standards Board may employ, subject to Chapter 126 of the General Statutes, the necessary personnel for the performance of its functions, and fix their compensation within the limits of funds available to the Standards Board."

Sec. 3. G.S. 115C-290.5(a) reads as rewritten:

"(a) The Standards Board shall administer this Article. In fulfilling this duty, the Standards Board shall:

(1) Develop and implement a North Carolina Public School Administrator Exam, based on the professional standards established by the Standards Board.
(2) Establish and collect an application fee not to exceed fifty dollars ($50.00), and an exam fee not to exceed one hundred fifty dollars ($150.00). Fees collected under this Article shall be credited to the General Fund as nontax revenue.
(3) Review the educational achievements of an applicant to take the exam to determine whether the achievements meet the requirements set by G.S. 115C-290.7.
(4) Notify the State Board of Education of the names and addresses of the persons who passed the exam and are thereby ~~qualified~~ recommended to be certified as public school administrators by the State Board of Education.
(5) Maintain accounts and records in accordance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.
(6) Adopt rules in accordance with Chapter 150B of the General Statutes to implement this Article.
(7) Submit an annual report by December 1 of each year to the Joint Legislative Education Oversight Committee of its activities during the preceding year, together with any recommendations and findings regarding improvement of the profession of public school administration."

Sec. 4. G.S. 115C-290.6 reads as rewritten:

"§ *115C-290.6. Application ~~for qualification by~~ to the Standards Board.*

An individual who seeks to be ~~qualified~~ recommended by the Standards Board ~~as a public school administrator, thereby becoming eligible~~ for certification by the State Board of Education, shall file a written application with the Standards Board. The application must be on a form provided by the Standards Board, must be accompanied by the required application and exam fees established by the Standards Board, and must include any information required by the Standards Board."

Sec. 5. G.S. 115C-290.7 reads as rewritten:

"§ *115C-290.7. ~~Qualification~~ Recommendation by the Standards Board.*

(a) The Standards Board shall ~~qualify~~ recommend for certification by the State Board an individual who submits a complete application to the Standards Board and satisfies all of the following requirements:

(1) Pays the application fee established by the Standards Board.
(2) Pays the exam fee established by the Standards Board.
(3) Has a bachelors degree from an accredited college or university and has a graduate degree from a public school administration program that meets the public school administrator program approval standards set by the State Board of Education.
(4) Passes the exam.

(b) The State Board of Education may not certify an individual as a public school administrator unless it has received notice from the Standards Board ~~of the individual's qualification~~ that the person is recommended by the Standards Board under this Article. The State Board may designate

initial certification as a license; advanced training may be designated as a certified area of practice."

Sec. 6. G.S. 115C-290.8 reads as rewritten:

"*§ 115C-290.8. Exemptions from ~~qualification~~ requirements.*

The ~~qualification~~ requirements of this Article do not apply to a person who, at any time during the five years preceding January 1, ~~1997,~~ 1998, was engaged in public school administration at either a public school in North Carolina or a school in North Carolina operated by the United States government. A person who is exempt from the ~~qualification~~ requirements of this Article but applies ~~for qualification~~ to the Standards Board under this Article shall be ~~is~~ subject to ~~it,~~ the Article."

Sec. 7. G.S. 115C-290.9 reads as rewritten:

"*§ 115C-290.9. Grounds for refusal to ~~qualify~~ recommend a person.*

The Standards Board may, in accordance with Chapter 150B of the General Statutes, refuse to ~~qualify~~ recommend a person for certification by the State Board of Education for any of the following reasons:

(1) Submitting a false application ~~for qualification~~ or otherwise attempting to obtain ~~qualification~~ a recommendation from the Standards Board by fraud or misrepresentation.
(2) Failure to meet the requirements set in G.S. 115C-290.7.
(3) Violating a provision of this Article or a rule adopted by the Standards Board."

Sec. 8. Section 5 of Chapter 392 of the 1993 Session Laws reads as rewritten:

"Sec. 5. G.S. 115C-290.3 and G.S. 115C-290.6 through G.S. ~~115C-290.10,~~ 115C-290.9, as established in Section 1 of this act, become effective January 1, ~~1997,~~ 1998. The remaining provisions of Article 19A of Chapter 115C, as established in Section 1 of this act, and the remaining sections of this act are effective upon ratification. Notwithstanding G.S. 115C-290.4, members appointed to the North Carolina Standards Board for Public School Administration before January 1, ~~1997,~~ 1998, are not required to be qualified under Article 19A of Chapter 115C of the General Statutes, as enacted by this act."

Sec. 9. Sections 2, 4, 5, 6, and 7 of this act become effective January 1, 1998. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1995.

H.B. 456 **CHAPTER 117**

AN ACT TO CREATE THE NORTH CAROLINA PROGRESS BOARD.

Whereas, the Commission for a Competitive North Carolina was created in 1993 by executive order of Governor James B. Hunt, Jr.; and

Whereas, there are 55 members of the Commission, representing business, education, nonprofits, and elected leadership, including eight legislators; and

Whereas, cabinet secretaries and heads of major boards and commissions served as ex officio members; and

Whereas, the Commission was charged by the Governor with creating a vision for the State of North Carolina 20 years hence; setting clear goals to achieve that vision; and identifying ways to measure progress toward those goals; and

Whereas, the intent is to develop clear targets and milestones to measure progress toward these goals; and

Whereas, the Governor charged the Commission with proposing a process to hold government and other institutions accountable for progress toward those major goals; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Article 9 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 2A. North Carolina Progress Board.

"*§ 143B-372.1. North Carolina Progress Board.*

(a) There is established within the Department of Administration the North Carolina Progress Board. The Board shall be located administratively in the Department of Administration but shall exercise all its prescribed statutory powers independently of the Department of Administration.

(b) The North Carolina Progress Board shall consist of 14 members as follows:

(1) The Governor, ex officio;

(2) Seven persons appointed by the Governor, none of whom shall be State employees or officers;

(3) Three persons appointed by the Speaker of the House of Representatives; and

(4) Three persons appointed by the President Pro Tempore of the Senate.

(c) The Governor shall be chair of the North Carolina Progress Board. The Governor shall appoint a vice-chair from among the membership of the North Carolina Progress Board to serve at the pleasure of the Governor. The North Carolina Progress Board may elect such other officers as it sees fit.

(d) The North Carolina Progress Board shall meet at least twice annually on the call of the chair or as additionally provided by the North Carolina Progress Board. A quorum is eight members of the Board. Members may not send designees to board meetings, nor may they vote by proxy.

(e) Initial appointments shall be for terms to begin July 1, 1995. Of the Governor's appointments, four shall be for two-year terms and three shall be for four-year terms. Of the appointments made by the Speaker of the House of Representatives and the President Pro Tempore of the Senate, one shall be for a two-year term and two shall be for a four-year term. As terms expire, successors shall be appointed for four-year terms.

(f) No member may be appointed to more than two consecutive terms. A member of the House of Representatives appointed by the Speaker of the House vacates membership on the North Carolina Progress Board when that person is no longer a member of the House of Representatives, except that if that person is in office at the expiration of the term of office in the House of Representatives but has not been elected to the next term, that person shall

continue to serve until the convening of the regular session. A member of the Senate appointed by the President Pro Tempore of the Senate vacates membership on the North Carolina Progress Board when that person is no longer a member of the Senate, except that if that person is in office at the expiration of the term of office in the Senate but has not been elected to the next term, that person shall continue to serve until the convening of the regular session.

"*§ 143B-372.2. Responsibilities.*

(a) The General Assembly notes that the Commission for a Competitive North Carolina developed goals in the following categories:

(1) Healthy Children and Families;
(2) Quality Education for All;
(3) A High Performance Workforce;
(4) A Prosperous Economy;
(5) A Sustainable Environment;
(6) Technology and Infrastructure Development;
(7) Safe and Vibrant Communities; and
(8) Active Citizenship/Accountable Government.

The Commission for a Competitive North Carolina adopted a report which established major goals and ways to measure progress toward these goals.

(b) The General Assembly finds that:

(1) The North Carolina economy of the future can provide unparalleled opportunity while maintaining North Carolina's traditional values, if the State pursues the future with clarity of purpose and perseverance;
(2) The North Carolina economy is in the midst of a massive transition created by technological changes, global competition, and new production practices; and
(3) In order to maintain employment opportunities, increase income levels, reduce poverty, and generate the public revenues necessary to provide public services, North Carolina must increasingly rely on an economy which adds value to its natural and human resources and provides a diverse mix of products.

(c) The North Carolina Progress Board shall:

(1) Encourage the discussion and understanding of critical global and national social and economic trends that will affect North Carolina in the coming decades;
(2) Examine the report of the Commission for a Competitive North Carolina;
(3) Track the eight issue areas set out in subsection (a) of this section;
(4) Hold public hearings and other methods of public participation to secure the views of citizens on priority goals for North Carolina;
(5) Formulate and submit to North Carolinians a report that describes and explains a vision for North Carolina's progress over the next 20 to 30 years;
(6) Submit to the 1997 Regular Session of the General Assembly prior to its convening, specific targets and milestones to accomplish its mission;

(7) Recommend how the targets and milestones can be applied to increase the accountability of government to the people of this State; and

(8) Report periodically to the people of North Carolina on progress toward meeting goals, targets, and milestones.

(d) The Regular Session of the General Assembly shall further define the mission of the North Carolina Progress Board in continuing its work.

(e) The General Assembly, after adopting the initial set of goals and measures as proposed or amended, may alter the goals and measures.

"§ 143B-372.3. Staff.

(a) The North Carolina Progress Board may hire an executive director, who may be dismissed by the North Carolina Progress Board. The Executive Director shall report to the North Carolina Progress Board. The Executive Director shall hire support staff and may dismiss them.

(b) There may be an Executive Staff Committee to assist the North Carolina Progress Board which shall consist of the Executive Director, if hired, the State Budget Officer, the State Planning Officer, and the Director of Fiscal Research.

(c) The State Budget Office and the State Planning Office shall also provide staff support to the North Carolina Progress Board."

Sec. 2. Part 2 of Article 9 of Chapter 143B of the General Statutes is repealed.

Sec. 3. No additional funds are appropriated to implement this act. Members may be appointed upon ratification of this act for terms to commence July 1, 1995.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1995.

H.B. 470 **CHAPTER 118**

AN ACT TO MAKE A TECHNICAL CORRECTION TO THE NEW BERN CIVIL SERVICE PROVISIONS FOR POLICE TO DELETE OLD REPEALED MATERIAL INADVERTENTLY APPEARING IN A 1993 REWRITE.

The General Assembly of North Carolina enacts:

Section 1. Section 42 of Chapter 1281 of the Session Laws of 1957, as amended by Chapter 934 of the Session Laws of 1959, Chapter 1111 of the Session Laws of 1961, Chapter 693 of the Session Laws of 1965, Chapter 324 of the Session Laws of 1969, Chapter 785 of the Session Laws of 1971, Section 4 of Chapter 1168 of the Session Laws of 1981, and Chapter 630 of the Session Laws of 1993, is rewritten to read:

"Sec. 42. *Civil Service for Police.* (a) There shall be created a Civil Service Board for the City of New Bern, to consist of five members who shall be representative citizens of the City of New Bern, to be appointed by the Board of Aldermen to serve for a period of two years, except that one of the three members first appointed shall be appointed to serve for a period of one year who shall be replaced at the end of such term by a member who

shall serve a term as above set forth, and except that the initial term of the two members added to expand the Board from three members to five members shall be for one year. The Board of Aldermen may provide that the initial terms of the two additional members may extend beyond the initial one year to expire on the same month and date as the terms of the three other members.

No member of the Civil Service Board may serve on the Board of Aldermen or on the police force while a member of the Civil Service Board, and no member of said board shall serve more than one consecutive term. In case of a vacancy on the Civil Service Board, the Board of Aldermen shall fill such vacancy for the unexpired term of said member. A majority of said board shall constitute a quorum.

The members of said Civil Service Board shall take an oath to faithfully perform their duties. The members of said board shall be subject to removal from office by a two-thirds vote of the Board of Aldermen, with or without cause.

(b) Said board, with the advice and counsel of the Chief of Police, shall establish and fix requirements for applicants for positions in the police department, and all persons who make application shall be subjected to an examination by said board which shall be competitive and free to all persons possessing the rights of suffrage and meeting the requirements of said board, subject to reasonable limitations as to residence, age, health, and moral character, and said examinations shall be practical in their nature and shall be limited to those matters which will fairly test the relative ability of the persons examined to discharge the duties and responsibilities of the positions which they are seeking, and shall include tests of physical qualifications and health, but no applicant shall be examined concerning his political or religious opinions or affiliations.

(c) The Civil Service Board shall advertise for applicants for positions in the police department in a newspaper of general circulation in the City of New Bern. Said advertisement shall state the basic requirements and a closing date for receiving applications. Notice of time and place of every examination shall be given to each qualified applicant by the board at least five days prior to such examination.

(d) Said board shall prepare and keep a register of persons passing said examinations, graded according to their respective showings upon said examinations. Any applicant passing said examinations shall be eligible to be appointed a member of the police department. The Board of Aldermen shall, from time to time, select new appointees to the police department from such register, taking into consideration the grade which an applicant has made upon such examination, his physical condition, moral character, and standing in the community. Such examination shall be held for applicants as often as said board shall determine to be necessary, but no less frequently than once every two years, and the names of applicants appearing on the register of persons passing the examination shall constitute the register from which applicants for membership in the police department shall be selected, until the next examination shall be given. From the date of his selection by the Board of Aldermen, each new appointee to the police department shall serve in a probationary status for a period of 12 months, during which said

period the officer may be dismissed by the Chief of Police, with or without cause. The officer so dismissed shall have no opportunity for a hearing before the Civil Service Board, or otherwise, on the subject of his dismissal.

(e) No member of the police department coming under the jurisdiction of the Civil Service Board shall take any part in any election or political function other than that of exercising his right to vote, and any such member of the police department convicted of violating this provision by the Civil Service Board shall be dismissed from service of said department by the Civil Service Board.

(f) Promotions and demotions of members of the police department shall be within the discretion of the Chief of Police.

The Chief of Police may suspend any member of the police department for violation of the rules and regulations of the police department for a period of time not to exceed 30 days at any one time, said suspension to be without pay. Such suspension by the Chief of Police shall not be subject to review by the Civil Service Board; provided, however, that in the event the officer is subjected to another suspension within 90 days, said officer shall have the right to appeal such additional suspension to the Civil Service Board, and any hearing conducted by the Civil Service Board pursuant to such appeal shall be covered by the rules herein below set forth.

In the event the Chief of Police shall determine that a member of the police department should be discharged or subjected to disciplinary action not within the power of the Chief of Police under the above provisions of this section, the Chief shall reduce his charges against the said member of the police department to writing, including his recommendation relative to discharge, fine, or suspension without pay, and shall file a copy of the same with the clerk of the Civil Service Board and deliver a copy to the said member of the police department personally or by certified mail, return receipt requested. Upon delivery of said written charges and recommendations to the member of the police department, if the Chief's recommendation is that the member be discharged or be suspended, the Chief of Police shall suspend such member from duty forthwith. If the charged officer shall not file a request for hearing by the Civil Service Board with the clerk to said Board within five days after the delivery of the charges and recommendations to him, the recommendation of the Chief shall thereupon become effective. In the event said charged officer requests a hearing within said specified period of time, then and in that event, the hearing by the Board shall be conducted as soon as is reasonably possible, and in no event later than 30 days after the written charges have been filed with the clerk to said Board, unless the suspended member of the police department shall, in writing, file with said clerk a request for delay beyond said period of time, stating the reason therefor. In the event of such request, the Board shall grant a reasonable postponement if, in its opinion, it is merited by the request, keeping in mind the welfare of the individual and the police department.

If a charged member of the police department, who has requested such hearing, shall withdraw his request, the recommendation of the Chief shall become effective immediately, and no hearing shall be conducted by the Civil Service Board.

(g) Each member of said Board shall have the power to secure by subpoena both the attendance and testimony of witnesses and the production of any documents or papers of any kind relative to such investigation at such hearing. Such subpoenas may be directed to any law enforcement officer within the State of North Carolina for service.

The Civil Service Board may make such rules and regulations, from time to time, with respect to the manner in which the hearing shall be conducted as shall be desired by the Board. Such hearings may be open or closed to spectators. Witnesses who are to appear before the Board may be sequestered. Testimony offered before the Board shall be recorded by mechanical process or by court reporter. The ordinary rules of evidence shall not apply, but the hearing shall be conducted with decorum. The decision of the Civil Service Board shall be final.

(h) In the event the charged police officer is found guilty of violating the rules and regulations of the police department, the Civil Service Board may discharge him, fine him, or suspend him without pay for a period not to exceed 90 days. In addition, the Civil Service Board may attach such conditions to his reinstatement to duty as it deems advisable.

(i) In the event a member of the police department shall be appointed by the Board of Aldermen as Chief of Police and shall, prior to his retirement, lose his position as said Chief of Police by removal, failure of reappointment, or resignation, he may, at his option, then reassume his position as a member of the police department of the City of New Bern, and in such capacity shall perform such duties as may be assigned him by his successor in office. During a period of six months following his resumption of duties as a member of the police department rather than as Chief of Police, he shall receive as compensation a salary not less than that of the pay grade in which he was serving at the time of his appointment as Chief, together with such increases in pay as have been given in the intervening period to that pay grade; provided, however, said individual shall be subject to disciplinary action as herein provided, as are other members of the police department.

(j) The Board shall make an annual report of its actions for the preceding year and said annual report shall be kept in the files of said Board and copy delivered to the Board of Aldermen.

The city manager or his designee shall act as secretary to the Civil Service Board and shall keep the minutes of its meetings and shall be custodian of all papers and records pertaining to the business of said Board and shall keep a record of all examinations held and shall perform such other duties as the Board may require.

(k) The members of said Civil Service Board shall serve without compensation.

(l) The provisions of this Civil Service Section shall not apply to the Chief of Police."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1995.

H.B. 602 **CHAPTER 119**

AN ACT TO PROVIDE FOR A REFERENDUM ON THE REPEAL OF THE CHARTER OF THE TOWN OF SANDYFIELD.

The General Assembly of North Carolina enacts:

Section 1. Chapter 729 of the Session Laws of 1993 is repealed.

Sec. 2. Section 1 of this act becomes effective only if approved by the qualified voters of the Town of Sandyfield in a referendum. The election shall be conducted by the Columbus County Board of Elections on November 7, 1995. The question on the ballot shall be:

"[ ] FOR [ ]AGAINST
Incorporation of the Town of Sandyfield".

Sec. 3. If a majority of the votes are cast AGAINST the question, then effective upon the certification of the results of the election, Section 1 of this act becomes effective, except that the governing board of the town as of the date of the election is continued in office until January 1, 1996, for the sole purpose of liquidating the assets and liabilities of the town and filing any financial reports that may be required by law. If a majority of the votes are cast AGAINST the question, then the election of town officers on that date is voided. Any net assets of the Town shall be paid over to Columbus County, which shall use those funds for some public purpose in the area of the former town.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1995.

H.B. 666 **CHAPTER 120**

AN ACT TO CHANGE THE PAY DATE FOR THE CHEROKEE COUNTY SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 115C-302(a), G.S. 115C-316(a), or any other provision of law, all 10-month employees of the Cherokee County Board of Education who are paid on a monthly basis shall be paid on the twelfth day of each month. Nothing in this section shall have the effect of changing the rate of pay for any employee of the Cherokee County Board of Education.

This section shall not be construed to authorize prepayment of any employees by the Cherokee County Board of Education.

Sec. 2. This act becomes effective September 1, 1995.

In the General Assembly read three times and ratified this the 29th day of May, 1995.

H.B. 749 **CHAPTER 121**

AN ACT TO AMEND THE PROCEDURE FOR SENDING INSURANCE AGENTS AND COMPANIES NOTICES AND REQUESTS FOR

CANCELLATION OF INSURANCE CONTRACTS BY INSURANCE PREMIUM FINANCE COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-35-85 reads as rewritten:

"*§ 58-35-85. Procedure for cancellation of insurance contract upon default; return of unearned premiums; collection of cash surrender value.*

When an insurance premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be cancelled unless ~~such~~ the cancellation is effectuated in accordance with the following provisions:

(1) Not less than 10 days' written notice be mailed to the last known address of the insured or insureds shown on the insurance premium finance agreement of the intent of the insurance premium finance company to cancel his or their insurance contract or contracts unless the defaulted installment payment is received. A notice thereof shall also be ~~mailed~~ sent to the insurance agent.

(2) After expiration of ~~such~~ the period, the insurance premium finance company shall ~~mail~~ send the insurer a request for ~~cancellation, including a copy of the power of attorney,~~ cancellation and shall mail a copy of the request for cancellation to the insured at his last known address as shown on the insurance premium finance agreement. The premium finance company shall include a copy of the power of attorney with the request for cancellation if the insurer has not already received a copy of the power of attorney with the application.

(3) Upon receipt of a copy of ~~such~~ the request for cancellation notice by the insurer, the insurance contract shall be cancelled with the same force and effect as if the aforesaid request for cancellation had been submitted by the insured himself, without requiring the return of the insurance contract or contracts.

(4) All statutory, regulatory, and contractual restrictions providing that the insured may not cancel his insurance contract unless he first satisfies ~~such~~ the restrictions by giving a prescribed notice to a governmental agency, the insurance carrier, an individual, or a person designated to receive ~~such~~ the notice for said governmental agency, insurance carrier, or individual shall apply where cancellation is effected under the provisions of this section.

(5) Whenever an insurance contract is cancelled in accordance with this section, the insurer shall promptly return whatever gross unearned premiums are due under the contract to the insurance premium finance company effecting the cancellation for the benefit of the insured or insureds. Whenever the return premium is in excess of the amount due the insurance premium finance company by the insured under the agreement, ~~such~~ the excess shall be remitted promptly to the order of the insured, subject to the minimum service charge provided for in this Article.

(6) The provisions of this section relating to request for cancellation by the insurance premium finance company of an insurance contract and the return by an insurer of unearned premiums to the insurance premium finance company, also apply to the surrender by the insurance premium finance company of an insurance contract providing life insurance and the payment by the insurer of the cash value of the contract to the insurance premium finance company, except that the insurer may require the surrender of the insurance contract."

Sec. 2. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 29th day of May, 1995.

S.B. 487 **CHAPTER 122**

AN ACT TO PROVIDE THAT THE ASSISTANT ADJUTANT GENERAL FOR THE ARMY NATIONAL GUARD SHALL SERVE IN THE MILITARY POSITION OF BRIGADIER GENERAL - LINE, DEPUTY, STATE AREA COMMAND (STARC) COMMANDER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 127A-19 reads as rewritten:

"*§ 127A-19. Adjutant General.*

The military head of the militia shall be the Adjutant General who shall hold the rank of major general. The Adjutant General shall be appointed by the Governor in his capacity as commander in chief of the militia, in consultation with the Secretary of Crime Control and Public Safety, and shall serve at the pleasure of the Governor. No person shall be appointed as Adjutant General who has less than five years' commissioned service in an active status in any component of the armed forces of the United States. The Adjutant General, while holding such office, may be a member of the active national guard or naval militia.

Subject to the approval of the Governor and in consultation with the Secretary, Department of Crime Control and Public Safety, the Adjutant General may appoint a deputy adjutant general for ~~army national guard~~ Army National Guard, an assistant adjutant general for Army National Guard, and an assistant adjutant general for ~~air national guard, both~~ Air National Guard, each of whom may hold the rank of brigadier general and who shall serve at the pleasure of the Governor. The assistant adjutant general for Army National Guard shall also serve in the military position of Brigadier General - Line, Deputy, State Area Command (STARC) Commander. The Adjutant General may also employ such staff members and other personnel as may be authorized by the Secretary and funded."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1995.

S.B. 506 CHAPTER 123

AN ACT TO MAKE CLARIFYING, TECHNICAL CHANGES TO VARIOUS PUBLIC HEALTH LAWS, AND TO ESTABLISH A MINIMUM BURIAL DEPTH FOR HUMAN INTERMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 37 of Chapter 143 of the General Statutes is repealed.

Sec. 2. G.S. 130A-4(b) reads as rewritten:

"(b) When requested by the Secretary, a local health department shall enforce the rules of the Commission under the supervision of the Department. The local health department shall utilize local staff authorized by the Department to enforce the specific rules. ~~However, the preceding sentence is inapplicable to the exercise of enforcement and permit authority under G.S. 130A-277.~~"

Sec. 3. G.S. 130A-277 reads as rewritten:

"*§ 130A-277. Duties of the Department.*

The Department shall enforce the rules of the Commission governing Grade 'A' milk by making sanitary inspections of Grade 'A' dairy farms, Grade 'A' processing plants, Grade 'A' milk haulers and Grade 'A' distributors; by determining the quality of Grade 'A' milk; and by evaluating methods of handling Grade 'A' milk to insure compliance with the provisions of the rules of the Commission. The Department shall issue permits for the operation of Grade 'A' dairy farms, processing plants and haulers in accordance with the provisions of the rules of the Commission and shall suspend or revoke permits for violations in accordance with the rules. ~~Upon request by a local board of health the Department shall delegate enforcement and permit authority to the local health department.~~"

Sec. 4. G.S. 113A-105(b) reads as rewritten:

"(b) The Coastal Resources Advisory Council shall consist of not more than 47 members appointed or designated as follows:

(1) Two individuals designated by the Secretary from among the employees of his Department;
(1a) The Secretary of the Department of Commerce or his designee;
(2) The Secretary of the Department of Administration or his designee;
(3) The Secretary of the Department of Transportation and Highway Safety or his designee, and one additional member selected by him from his Department;
(4) The State Health ~~Director;~~ Director or the designee thereof;
(5) The Commissioner of Agriculture or his designee;
(6) The Secretary of the Department of Cultural Resources or his designee;
(7) One member from each of the four multi-county planning districts of the coastal area to be appointed by the lead regional agency of each district;

(8) One representative from each of the counties in the coastal area to be designated by the respective boards of county commissioners;

(9) No more than eight additional members representative of cities in the coastal area and to be designated by the Commission;

(10) Three members selected by the Commission who are marine scientists or technologists;

(11) One member who is a local health director selected by the Commission upon the recommendation of the Secretary."

Sec. 5. G.S. 130A-33.31(a) reads as rewritten:

"(a) The Commission of Anatomy shall consist of five members, one representative from the field of mortuary science, ~~from the membership of the State Board of Mortuary Science,~~ and one each from The University of North Carolina School of Medicine, East Carolina University School of Medicine, Duke University School of Medicine, and Bowman Gray School of Medicine. The dean of each school shall make recommendations and the Secretary of Environment, Health, and Natural Resources shall appoint from such recommendations a member to the Commission. The president of the State Board of Mortuary Science shall appoint the representative from the field of mortuary science ~~one member from that Board~~ to the Commission. The members shall serve terms of four years except two of the original members shall serve a term of one year, one shall serve a term of two years, one shall serve a term of three years, and one shall serve a term of four years. The Secretary shall determine the terms of the original members."

Sec. 6. G.S. 130A-452 reads as rewritten:

"*§ 130A-452. Local air pollution control programs.*

(a) The Department may authorize any local air pollution control program to adopt and enforce the asbestos NESHAP for ~~renovations and demolitions~~ demolition and renovation if the local air pollution control ~~that~~ program is certified by the North Carolina Environmental Management Commission pursuant to G.S. 143-215.112. The Department shall authorize any local air pollution control program to adopt and enforce the asbestos NESHAP for ~~renovations and demolitions~~ demolition and renovation if the local air pollution control program was certified by the North Carolina Environmental Management Commission pursuant to G.S. 143-215.112 prior to October 1, 1994. A local air pollution control program shall continue to be authorized by the Department to enforce the asbestos NESHAP for ~~renovations and demolitions~~ demolition and renovation so long as the local air pollution control program maintains its certification under G.S. 143-215.112 and complies with any rules adopted by the Commission for Health Services pursuant to subsection (b) of this section. Any local air pollution control program authorized to adopt and enforce the asbestos NESHAP for demolition and renovation shall have the authority to enforce the asbestos NESHAP for demolition and renovation under G.S. 130A-18, 130A-22(b1), 130A-22(b2), and 130A-25. Judicial review of an administrative penalty assessed under G.S. 130-22(b1) and G.S. 130A-22(b2) shall be as provided in G.S. 143-215.112(d2)(1) and Article 4 of Chapter 150B of the General Statutes.

(b) The Commission for Health Services shall adopt rules regarding the authorization of local air pollution control programs to enforce the asbestos NESHAP for ~~renovations and demolitions.~~ demolition and renovation."

Sec. 7. G.S. 130A-444 reads as rewritten:

"*§ 130A-444. Definitions.*

Unless a different meaning is required by the context, the following definitions apply throughout this Article:

(1) 'AHERA' means Title II, Asbestos Hazard Emergency Response Act of the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., as amended by the Asbestos School Hazard Abatement Reauthorization Act of 1990, P.L. 101-637, 104 Stat. 4589 ('ASHARA').

(2) 'Asbestos' means asbestiform varieties of chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite and actinolite.

(3) 'Asbestos containing material' means material which contains more than one percent (1%) asbestos, including friable asbestos containing material and nonfriable asbestos containing material.

(3a) 'Asbestos NESHAP for ~~renovations and demolitions' means Title II, National Emission Standards for Hazardous Air Pollutants, specifically those regulations pertaining to regulation of asbestos in renovations and demolitions of the Clean Air Act, 42 U.S.C. § 7401, et seq., as amended.~~ demolition and renovation' means that portion of the National Emission Standards for Hazardous Air Pollutants for asbestos that governs demolition and renovation as set out in 40 CFR §§ 61.141, 61.145, 61.150, and 61.154 (1 July 1993 edition).

(4) 'Abatement' means work performed to repair, maintain, remove, isolate, or encapsulate asbestos containing material. The term does not include inspections, preparation of management plans, abatement project design, taking of samples, or project overview.

(5) 'Friable' means any material that when dry can be broken, crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after such material becomes damaged to the extent that when dry it can be crumbled, pulverized, or reduced to powder by hand pressure.

(6) 'Management' means all activities related to asbestos containing material, including inspections, preparation of management plans, abatement project design, abatement, project overview, and taking of samples.

(6a) 'Person' means an individual, a corporation, a company, an association, a partnership, a unit of local government, a State or federal agency, or any other legal entity.

(7) 'Public area' means those areas in any building other than a residence that are not covered under the Occupational Safety and Health Act of 1970, Pub. L. 91-596, 84 Stat. ~~1590 (codified as amended in scattered sections of U.S.C.),~~ 1590, 29 U.S.C. § 651, et seq., as amended.

(8) 'Removal' means stripping, chipping, sanding, sawing, drilling, scraping, sucking, and other methods of separating material from its installed location in a building.

(9) 'Residence' means any single family dwelling or any multi-family dwelling of fewer than 10 units."

Sec. 8. G.S. 130A-447(c) reads as rewritten:

"(c) The following persons are exempt from the accreditation requirements:

(1) The owner or operator of a building, other than school buildings subject to the provisions of AHERA, and his permanent employees when performing small-scale, short duration activities, as defined in 40 C.F.R. Pt. 763, Subpt. E, Appendix C ~~(1993),~~ (1994).

(2) A person performing asbestos containing material management activities in his personal residence.

(3) Governmental regulatory personnel performing inspections of asbestos containing material management activities solely for the purpose of determining compliance with applicable statutes or regulations.

(4) Persons licensed by the General Contractors Licensing Board, State Board of Examiners of Plumbing and Heating Contractors, State Board of Examiners of Electrical Contractors, or the State Board of Refrigeration Examiners when engaged in activities associated with their license when performing small-scale, short duration activities, as defined in 40 C.F.R. Pt. 763, Subpt. E, Appendix C ~~(1993),~~ (1994)."

Sec. 9. G.S. 143-215.107(a) reads as rewritten:

"(a) Duty to Adopt Plans, Standards, etc. -- The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

(1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.

(2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.

(3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.

(4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the operation of air contaminant sources of any class for which the Commission requires reporting shall make reports containing

such information as may be required by the Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(5) To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards. The standards may be applied uniformly to the State as a whole or to any area of the State designated by the Commission. This subdivision does not apply to ~~asbestos NESHAP for renovations and demolitions, defined in G.S. 130A-444, that are subject to regulation by the Commission for Health Services under Article 19 of Chapter 130A of the General Statutes.~~ that portion of the National Emission Standards for Hazardous Air Pollutants for asbestos that governs demolition and renovation as set out in 40 C.F.R. §§ 61.141, 61.145, 61.150, and 61.154 (1 July 1993 edition).

(6) To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission standards in compliance with applicable federal regulations.

(7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas.

(8) To develop and adopt standards and plans necessary to implement programs to control acid deposition and to regulate the use of sulfur dioxide allowances and nitrogen oxides emissions in accordance with Title IV and implementing regulations adopted by the United States Environmental Protection Agency.

(9) To regulate the oxygen content of gasoline, to require use of reformulated gasoline as the Commission determines necessary, to implement the requirements of Title II and implementing regulations adopted by the United States Environmental Protection Agency, and to develop standards and plans to implement this subdivision. Rules adopted under this subdivision may specify standards for a particular area of the State that differ from standards specified for other areas as may be necessary to improve ambient air quality within a particular area, achieve attainment or preclude violations of the National Ambient Air Quality Standards, or to meet other federal requirements. Rules may authorize the use of marketable oxygen credits for gasoline as provided in federal requirements.

(10) To develop and adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency."

Sec. 10. G.S. 130A-440(a) reads as rewritten:

"(a) Every child in this State entering kindergarten in the public schools shall receive a health assessment. The health assessment shall be made ~~between the first of January prior to school entry and~~ no more than 12 months prior to the date of school entry. No child shall attend kindergarten unless a health assessment transmittal form, developed pursuant to G.S. 130A-441, indicating that the child has received the health assessment required by this section, is presented to the school principal. The medical provider, or the parent, guardian, or person in loco parentis, must present a completed health assessment transmittal form to the principal of the school on or before the child's first day of attendance. If a health assessment transmittal form is not presented on or before the first day, the principal shall present a notice of deficiency to the parent, guardian, or responsible person. The parent, guardian, or responsible person shall have 30 calendar days from the first day of attendance to present the required health assessment transmittal form for the child. Upon termination of 30 calendar days, the principal shall not permit the child to attend the school until the required health assessment transmittal form has been presented."

Sec. 11. Part 2 of Article 8 of Chapter 130A is repealed.

Sec. 12. G.S. 130A-247 reads as rewritten:

"§ *130A-247. Definitions.*

The following definitions shall apply throughout this Part:

(1) 'Establishment' means (i) an establishment that prepares or serves drink, (ii) an establishment that prepares or serves food, (iii) an establishment that provides lodging, ~~or~~ (iv) a bed and breakfast ~~inn,~~ inn, or (v) an establishment that prepares and sells meat food products as defined in G.S. 106-549.15(14) or poultry products as defined in G.S. 106-549.51(26).

(1a) 'Permanent house guest' means a person who receives room or board for periods of a week or longer. The term includes visitors of the permanent house guest.

(2) 'Private club' means an organization that maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in G.S. 105-130.2(1).

(3) 'Regular boarder' means a person who receives food for periods of a week or longer.

(4) 'Establishment that prepares or serves drink' means a business or other entity that puts together, portions, sets out, or hands out drinks in unpackaged portions using containers that are reused on the premises rather than single-service containers.

(5) 'Establishment that prepares or serves food' means a business or other entity that cooks, puts together, portions, sets out, or hands out food in unpackaged portions for human consumption.

(6) 'Bed and breakfast inn' means a business of not more than 12 guest rooms that offers bed and breakfast accommodations to at

least nine but not more than 23 persons per night for a period of less than one week, and that:

a. Does not serve food or drink to the general public for pay;
b. Serves only the breakfast meal, and that meal is served only to overnight guests of the business;
c. Includes the price of breakfast in the room rate; and
d. Is the permanent residence of the owner or the manager of the business."

Sec. 13. (a) The catch line to G.S. 130A-248 reads as rewritten:

"*§ 130A-248. Regulation of ~~restaurants and hotels.~~ food and lodging establishments.*"

(b) G.S. 130A-248(a) reads as rewritten:

"(a) For the protection of the public health, the Commission shall adopt rules governing the sanitation of ~~restaurants, school cafeterias, summer camps, food or drink stands, mobile food units, pushcarts, and other establishments that prepare or serve food or drink for pay,~~ establishments that prepare or serve drink or food for pay and establishments that prepare and sell meat food products or poultry products. However, any establishment that prepares or serves food or drink to the public, regardless of pay, shall be subject to the provisions of this Article if the establishment that prepares or serves food or drink holds an ABC permit, as defined in G.S. 18B-101, meets any of the definitions in G.S. 18B-1000, and does not meet the definition of a private club as provided in G.S. 130A-247(2)."

(c) G.S. 130A-248(a3) reads as rewritten:

"(a3) The rules adopted by the Commission pursuant to subsections (a), (a1), and (a2) of this section shall address, but not be limited to, the following:

(1) Sanitation requirements for cleanliness of floors, walls, ceilings, storage spaces, utensils, ventilation equipment, and other areas and items;
(2) ~~The adequacy of:~~ Requirements for:
  a. Lighting and water supply;
  b. Wastewater collection, treatment, and disposal facilities; and
  c. ~~Lavatories,~~ Lavatory and toilet facilities, food protection, and waste disposal;
(3) The cleaning and bactericidal treatment of eating and drinking utensils and other food-contact surfaces;
(3a) The appropriate and reasonable use of gloves or utensils by employees who handle unwrapped food;
(4) The methods of food preparation, transportation, catering, storage, and serving;
(5) The health of employees;
(6) Animal and vermin control; and
(7) The prohibition against the offering of unwrapped food samples to the general public unless the offering and acceptance of the samples are continuously supervised by an agent of the entity preparing or offering the samples or by an agent of the entity on whose premises the samples are made available. As used in this subdivision, 'food samples' means unwrapped food prepared and

made available for sampling by and without charge to the general public for the purpose of promoting the food made available for sampling. This subdivision does not apply to unwrapped food prepared and offered in buffet, cafeteria, or other style in exchange for payment by the general public or by the person or entity arranging for the preparation and offering of such unwrapped food. This subdivision shall not apply to open air produce markets nor to farmer market facilities operated on land owned or leased by the State of North Carolina or any local government.

The rules shall contain a system for grading facilities, such as Grade A, Grade B, and Grade C."

(d) G.S. 130A-248(d) reads as rewritten:

"(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Human ~~Resources~~ Resources, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, an annual fee of twenty-five dollars ($25.00). The Department shall charge an additional twenty-five dollar ($25.00) late payment fee to any establishment that fails to pay the required fee within 45 days after billing by the Department. The Department may, in accordance with G.S. 130A-23, suspend or revoke the permit of an establishment that fails to pay the required fee within 60 days after billing by the Department. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local public health programs and activities. No more than thirty-three and one-third percent (33-1/3%) of the fees collected may be used to support State health programs and activities."

Sec. 14. G.S. 130A-250 reads as rewritten:

"*§ 130A-250. Exemptions.*

The following shall be exempt from this Part:

(1) Establishments that provide lodging described in G.S. 130A-248(a1) with four or fewer lodging units;
(2) Condominiums;
(3) Establishments that prepare or serve food or provide lodging to regular boarders or permanent house guests only;
(4) Private homes that occasionally offer lodging accommodations, which may include the providing of food, for two weeks or less to persons attending special events, provided these homes are not bed and breakfast homes or bed and breakfast inns;
(5) Private clubs;
(6) Curb markets operated by the State Agricultural Extension Service;
(7) Establishments that prepare or serve food or drink for pay no more frequently than once a month for a period not to exceed two consecutive days; ~~and~~
(8) Establishments that put together, portion, set out, or hand out only drinks using single service containers that are not reused on the ~~premises.~~ premises; and

(9) Markets where meat food products or poultry products are prepared and sold and which are under the continuous inspection by the North Carolina Department of Agriculture or the United States Department of Agriculture."

Sec. 15. G.S. 130A-23(d) reads as rewritten:

"(d) A permit shall be suspended or revoked immediately if a violation of the Chapter, the rules or a condition imposed upon the permit presents an imminent hazard. An operation permit issued pursuant to G.S. 130A-281 shall be immediately suspended for failure of a public swimming pool to maintain minimum water quality or safety standards or design and construction standards pertaining to the abatement of suction hazards which result in an unsafe condition. A permit issued pursuant to ~~G.S. 130A-228 or~~ G.S. 130A-248 shall be revoked immediately for failure of ~~a market or a facility~~ an establishment to maintain a minimum grade of C. The Secretary shall immediately give notice of the suspension or ~~revocation and shall immediately file a petition for a contested case in accordance with~~ revocation and the right of the permit holder or program participant to appeal the suspension or revocation under G.S. 150B-23."

Sec. 16. Article 13A of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"*§ 90-210.25A. Minimum burial depth.*

When final disposition of a human body entails interment, the top of the uppermost part of the burial vault or other encasement shall be a minimum of 18 inches below the ground surface. This section does not apply to burials where no part of the burial vault or other encasement containing the body is touching the ground."

Sec. 17. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1995.

H.B. 178 **CHAPTER 124**

AN ACT TO PROVIDE THAT SCOTLAND COUNTY AND THE CITIES LOCATED IN THAT COUNTY MAY REQUIRE ISSUANCE OF A BUILDING PERMIT FOR THE REPLACEMENT AND DISPOSAL OF ROOFING.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 381 of the 1993 Session Laws reads as rewritten:

"Sec. 3. This act applies only to Alamance ~~County~~ and Scotland Counties and the cities located in ~~that county,~~ those counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1995.

H.B. 492 **CHAPTER 125**

AN ACT TO ALLOW THE TOWN OF CLAYTON TO USE THE SINGLE-PRIME CONTRACTOR OR THE NEGOTIATION METHOD OF CONSTRUCTING THE HOCUTT-ELLINGTON LIBRARY ADDITION.

The General Assembly of North Carolina enacts:

Section 1. The Town of Clayton may contract for the design and construction of the addition to the Hocutt-Ellington Library in the Town of Clayton without being subject to the requirements of G.S. 143-128, 143-129, 143-131, and 143-132. This authorization includes, if deemed appropriate by the governing body of the Town of Clayton, the use of the single-prime contractor method of design and construction or a request for proposals and negotiation as an alternative design and construction method.

Sec. 2. This act applies to the Town of Clayton only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1995.

H.B. 520 **CHAPTER 126**

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF WAYNESVILLE.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Waynesville is hereby revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF WAYNESVILLE.

"ARTICLE I. INCORPORATION, CORPORATE POWERS AND BOUNDARIES.

"Section 1.1. *Incorporation.* The Town of Waynesville, North Carolina, in the County of Haywood, and the inhabitants thereof, shall continue to be a municipal body politic and corporate, under the name and style of the 'Town of Waynesville', hereinafter at times referred to as the 'Town'.

"Sec. 1.2. *Powers.* The Town of Waynesville shall have and may exercise all of the powers, duties, rights, privileges and immunities which are now or hereafter may be conferred, either expressly or by implication, upon the Town of Waynesville specifically or upon municipal corporations generally by this Charter, by the State Constitution, or by general or local law.

"Sec. 1.3. *Corporate Limits.* The corporate limits of the Town of Waynesville shall be those existing at the time of ratification of this Charter, as the same are now or hereafter may be constituted pursuant to law. The corporate limits of the Town of Waynesville also include all areas within the corporate limits of the Town of Hazelwood existing on July 1, 1995, the date that the Town of Hazelwood is merged into the Town of Waynesville. An official map or description of the Town, showing the current Town boundaries, shall be maintained permanently in the office of the Town

Clerk, and shall be available for public inspection. Immediately upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map or description of the Town shall be made.

"ARTICLE II. MAYOR AND BOARD OF ALDERMEN.

"Sec. 2.1. *Governing Body.* The Mayor and Board of Aldermen, elected and constituted as herein set forth, shall be the governing body of the Town. On behalf of the Town, and in conformity with applicable laws, the Mayor and Board may provide for the exercise of all municipal powers, and shall be charged with the general government of the Town.

"Sec. 2.2. *Mayor; Terms of Office; Duties.* The Mayor shall be elected by and from the qualified voters of the Town for a term of four years, in the manner provided by Article III of this Charter; provided, the Mayor shall serve until his successor is elected and qualified. The Mayor shall be the official head of the Town government, shall preside at all meetings of the Board of Aldermen, and shall have the powers and duties of Mayor as prescribed by this Charter and the General Statutes. The Mayor shall have the right to vote on all matters before the Board.

"Sec. 2.3. *Board of Aldermen; Terms of Office.* The Board of Aldermen shall be composed of four members, each of whom shall be elected for terms of four years, in the manner provided by Article III of this Charter; provided, Board members shall serve until their successors are elected and qualified.

"Sec. 2.4. *Mayor Pro Tempore.* In accordance with applicable State laws, the Board of Aldermen shall appoint one of its members to act as Mayor Pro Tempore to perform the duties of the Mayor in the Mayor's absence or disability. The Mayor Pro Tempore as such shall have no fixed term of office, but shall serve in such capacity at the pleasure of the remaining members of the Board.

"Sec. 2.5. *Meetings of the Board.* In accordance with applicable State laws, the Board shall establish a suitable time and place for its regular meetings. Special meetings may be held according to applicable provisions of the General Statutes.

"Sec. 2.6. *Ordinances and Resolutions.* The adoption, amendment, repeal, pleading, or proving of Town ordinances and resolutions shall be in accordance with applicable provisions of the General Statutes of North Carolina not inconsistent with this Charter. Except as otherwise provided by law, all ordinances shall become effective upon adoption; provided, an ordinance may, by its own terms, specify some other time upon which it shall take effect. The enacting clause of all Town ordinances shall be: 'Be it ordained by the Board of Aldermen of the Town of Waynesville'.

"Sec. 2.7. *Voting Requirements; Quorum.* Official action of the Board shall, except as otherwise provided by law, be by majority vote, provided that a quorum, consisting of a majority of the actual membership of the Board, is present. Vacant seats are to be subtracted from the normal Board membership to determine actual membership.

"Sec. 2.8. *Qualifications for Office; Vacancies; Compensation.* The compensation of Board members, the filling of vacancies of the Board, and the qualifications of Board members shall be in accordance with applicable provisions of the General Statutes.

"ARTICLE III. ELECTIONS.

"Sec. 3.1. *Regular Municipal Elections; Conduct.* Regular municipal elections shall be held in the Town every four years in odd-numbered years, and shall be conducted in accordance with the uniform municipal election laws of North Carolina. The Mayor and members of the Board shall be elected according to the nonpartisan election method.

"Sec. 3.2. *Election of the Mayor.* At the regular municipal election in 1995, and every four years thereafter, there shall be elected a Mayor and four aldermen to serve a term of four years.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Sec. 4.1. *Form of Government.* The Town shall operate under the Council-Manager form of government, in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 4.2. *Town Manager.* The Board of Aldermen shall appoint a Town Manager who shall be the administrative head of Town government, and who shall be responsible to the Board for the proper administration of the affairs of the Town. The Town Manager shall hold office at the pleasure of the Board of Aldermen, and shall receive such compensation as the Board shall determine. In exercising his duties as chief administrator, the manager shall:

(1) Appoint and suspend or remove all Town officers and employees not elected by the people, except the Town Attorney and those whose appointment or removal is otherwise provided by law, in accordance with such general personnel rules, regulations, policies or ordinances as the Board shall adopt.

(2) Report to the Board of Aldermen each appointment or removal of an officer or employee at the next Board meeting following such appointment or removal.

(3) Direct and supervise the administration of all departments, offices, and agencies of the Town, subject to the general direction and control of the Board, except as otherwise provided by law.

(4) Attend all meetings of the board, unless excused therefrom, and recommend any measures that he deems expedient.

(5) Prepare and submit the annual budget and capital program to the Board.

(6) Keep the Board fully advised as to the financial condition of the Town and annually submit to the Board, and make available to the public, a complete report on the finances and administrative activities of the Town at the end of the fiscal year.

(7) Make any other reports that the Board may require concerning the operation of the Town departments, offices and agencies subject to his direction and control.

(8) Perform any other duties that may be required or authorized by the Board, or as required by law.

"Sec. 4.3. *Town Attorney.* The Board of Aldermen shall appoint a Town Attorney who shall be licensed to engage in the practice of law in the State of North Carolina. Upon request of the Board of Aldermen, it shall be the duty of the Town Attorney to defend suits against the Town; to advise the Mayor, Board of Aldermen and other Town officials with respect to the

affairs of the Town; to draft legal documents relating to the affairs of the Town; to inspect and pass upon agreements, contracts, franchises and other instruments with which the Town may be concerned; to attend meetings of the Board of Aldermen, and to perform other duties as the Board may direct.

"Sec. 4.4. *Town Clerk.* The Town Manager shall appoint a Town Clerk to keep a journal of the proceedings of the Board, to maintain in a safe place all records and documents pertaining to the affairs of the Town, and to perform such other duties as may be required by law or as the Board of Aldermen may direct.

"Sec. 4.5. *Town Finance Officer.* The Town Manager shall appoint a Town Finance Officer to perform the duties of the finance officer as required by the Local Government Budget and Fiscal Control Act.

"Sec. 4.6. *Town Tax Collector.* The Town Manager shall appoint a Town Tax Collector to collect all taxes, licenses, fees and other revenues accruing to the Town, subject to the General Statutes, the provisions of this Charter and the ordinances of the Town. The Town Tax Collector shall diligently comply with and enforce all the laws of North Carolina relating to the collection of taxes and other revenues by municipalities.

"Sec. 4.7. *Consolidation of Functions.* The Board of Aldermen may provide for the consolidation of any two or more positions of Town Manager, Town Clerk, Town Tax Collector and Town Finance Officer, or may assign the functions of any one or more of these positions to the holder or holders of any other of these positions, subject to the Local Government Budget and Fiscal Control Act.

"Sec. 4.8. *Other Administrative Officers and Employees.* Consistent with applicable State laws, the Board of Aldermen may establish other positions, provide for the appointment of other administrative officers and employees, and generally organize the Town government in order to promote the orderly and efficient administration of the affairs of the Town.

"ARTICLE V. PUBLIC IMPROVEMENTS.

"Sec. 5.1. *Assessments for Street and Sidewalk Improvements: Petition Unnecessary.*

(a) In addition to any authority which is now or hereafter may be granted by general law to the town for making street improvements, the Board of Aldermen is hereby authorized to make street improvements and to assess the cost thereof against abutting property owners in accordance with the provisions of this section.

(b) The Board of Aldermen may order street improvements and assess the cost thereof against the abutting property owners, exclusive of the costs incurred at street intersections, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes without the necessity of a petition, upon the finding by the Board as a fact that the street improvement project does not exceed 2,000 linear feet, and:

(1) That such street or part thereof is unsafe for vehicular traffic, and it is in the public interest to make such improvements;

(2) That it is in the public interest to connect two streets, or portions of a street already improved; or

(3) That it is in the public interest to widen a street, or part thereof, which is already improved, provided, that assessments for widening any street or portion of street without a petition shall be limited to the cost of widening and otherwise improving such street in accordance with the street classification and improvement standards established by the Town's thoroughfare or major street plan for the particular street or part thereof to be widened and improved under the authority granted by this Article.

(c) For the purpose of this Article, the term 'street improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curbs, gutters and street drainage facilities.

(d) In addition to any authority which is now or may hereafter be granted by general law to the Town for making sidewalk improvements, the Board is hereby authorized without the necessity of a petition, to make or to order to be made sidewalk improvements or repairs according to standards and specifications of the Town, and to assess the total costs thereof against abutting property owners, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes; provided however, that regardless of the assessment bases or bases employed, the Board of Aldermen may order the cost of sidewalk improvements made only on one side of a street to be assessed against property owners abutting both sides of such street.

(e) In ordering street and sidewalk improvements without a petition and assessing the cost thereof under authority of this Article, the Board shall comply with the procedure provided by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof.

(f) The effect of the act of levying assessments under the authority of this Article shall for all purposes be the same as if the assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes.

"ARTICLE VI. EFFECT ON PRIOR ORDINANCES, RESOLUTIONS AND POLICIES.

"Sec. 6.1. *Acts Not Repealed.* This act shall not be deemed to repeal, modify, or in any manner affect any of the following acts, portions of acts, or amendments thereto, whether or not such acts, portions of acts, or amendments are expressly set forth herein:

(1) Any acts concerning the property, affairs, or government of public schools in the Town of Waynesville; or

(2) Any acts validating, confirming, approving, or legalizing official proceedings, actions, contracts, or obligations of any kind.

"Sec. 6.2. *Acts Repealed.* The acts listed in the current Charter of the Town of Waynesville at Section 3 of Chapter 431 of the Session Laws of 1981 have been repealed as stated therein. Chapter 431 of the Session Laws of 1981 is repealed except for Section 3. Sections 1 and 2 of Chapter 225 of the Session Laws of 1977 are repealed.

"Sec. 6.3. *Affect Upon Rights or Interests.*

No provision of this act is intended, nor shall be construed, to affect in any way any rights or interests, whether public or private:

(1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act; or

(2) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken pursuant to or within the scope of any provisions of law repealed by this act.

"Sec. 6.4. *No Revival of Repealed Laws.* No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

(1) The repeal herein of any act repealing such law; or

(2) Any provision of this ordinance that disclaims an intention to repeal or affect enumerated or designated laws.

"Sec. 6.5. *Ordinances and Resolutions, Rules and Regulations to Remain in Effect.*

(a) All existing ordinances and resolutions of the Town of Waynesville and all existing rules or regulations of departments or agencies of the Town of Waynesville not inconsistent with the provisions of this act, shall continue in full force and effect until repealed, modified, or amended.

(b) No action or proceeding of any nature, whether civil or criminal, judicial or administrative, or otherwise, pending at the effective date of this ordinance by or against the Town of Waynesville or any of its departments or agencies shall be abated or otherwise affected by the adoption of this ordinance.

"Sec. 6.6. *Severability of Provisions.* If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

"Sec. 6.7. *Reference to General Statutes.* Whenever a reference is made in this ordinance to a particular provision of the General Statutes, and such provision is later amended, repealed, or superseded, the reference shall be deemed amended to refer to the amended General Statute, or the General Statute which most clearly corresponds to the statutory provision which is repealed or superseded.

"Sec. 6.8. *Validation of Previous Board Actions.* All ordinances, resolutions, orders, or actions of any kind taken by the governing body of the Town of Waynesville from and after May 14, 1974, are hereby validated and ratified.

"ARTICLE VII. TRANSITIONAL PROVISIONS.

"Sec. 7.1. *Effective Date of Merger: Status of Governing Bodies.* Subject to the conditions and provisions noted in this Article, the Town of Hazelwood is merged into the Town of Waynesville effective at 12:01 a.m. on July 1, 1995. The governing body for the merged entities will remain the governing body of the Town of Waynesville. The offices of the governing body of the Town of Waynesville will stand for election in November 1995. The terms of office of the governing board of the Town of Hazelwood will cease as of 12:00 midnight on June 30, 1995.

"Sec. 7.2. *Operational Procedures Upon Merger.* Upon the date of merger of the Town of Waynesville and the Town of Hazelwood:

(1) All property, real and personal and mixed, including accounts receivable, belonging to the Town of Hazelwood shall vest in, belong to, and be the property of the Town of Waynesville. The governing body of the Town of Hazelwood will take such actions and execute such documents as will carry into effect the provisions and the intent of this section;

(2) All judgments, liens, rights of liens, and causes of action of any nature in favor of the Town of Hazelwood shall vest in and remain and inure to the benefit of the Town of Waynesville;

(3) All taxes, assessments, water or sewer charges, and any other charges or fees, owing to the Town of Hazelwood shall be owed to and collected by the Town of Waynesville;

(4) All actions, suits, and proceedings pending against, or having been instituted by the Town of Hazelwood shall not be abated by the legislative act allowing merger, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if merger had not occurred, and the Town of Waynesville shall be a party to all such actions, suits, and proceedings in the place and stead of the Town of Hazelwood and shall pay or cause to be paid any judgments rendered against the Town of Hazelwood, its governing board and officials acting in their official capacity, in any such actions, suits, or proceedings. No new process need be served in any such action, suit, or proceeding;

(5) All obligations of the Town of Hazelwood, including outstanding indebtedness, shall be assumed by the Town of Waynesville, and all such obligations and outstanding indebtedness are hereby constituted obligations and indebtedness of the Town of Waynesville, and the financial resources of the Town of Waynesville shall be deemed to be pledged for the punctual payment of all such obligations and indebtedness;

(6) All ordinances of the Town of Hazelwood shall continue in full force and effect within the area to which they apply until the effective date of merger as ordinances, and after the effective date of merger, the Town of Waynesville ordinances will apply throughout its new corporate limits and where applicable extraterritorial jurisdiction;

(7) All franchises heretofore granted by the Town of Hazelwood, which are still in force shall continue as valid franchises of the Town of Waynesville for the purposes granted within the area formerly comprising the Town of Hazelwood, but shall not hereby be constituted valid franchises for any other portion of the corporate limits of the Town of Waynesville; and

(8) The Town of Waynesville shall assume responsibility for all current and future liabilities of the Town of Hazelwood for unemployment insurance benefit charges under G.S. 96-9(f)(1).

"Sec. 7.3. *Handling of Assets/Contracts, Liabilities/Permits in Floodway Until Date of Merger.* Between the dates of October 25, 1994, and July 1, 1995, the Mayor and Board of Aldermen of the Town of Hazelwood shall not:

(1) Dispose of any real estate, personal property, or other assets without first providing written notice to and securing the written approval of the Mayor and Board of Aldermen of the Town of Waynesville;
(2) Enter into any contracts or agreements which will extend beyond June 30, 1995, without first providing written notice to and securing the written approval of the Mayor and Board of Aldermen of the Town of Waynesville;
(3) Incur any debts or liabilities for which funds on hand are not sufficient or accrued revenues for the 1994-95 fiscal year will not be adequate to pay the cost without first providing written notice to and securing the written approval of the Mayor and Board of Aldermen of the Town of Waynesville; or
(4) Approve or grant any building permit after January 1, 1995, which allows construction in the 'floodway' designated by the Federal Emergency Management Agency, unless said construction will be finished, a final inspection completed, and, if one is required, a Certificate of Occupancy issued by June 30, 1995.

"Sec. 7.4. *Taxation.* All property that had a tax situs in the Town of Hazelwood on January 1, 1995, shall be considered to have a tax situs in the Town of Waynesville for the appropriate fiscal year, and any property properly listed for taxation in the Town of Hazelwood is properly listed for taxation in the Town of Waynesville.

"Sec. 7.5. *Personnel.* The employees of the Town of Hazelwood, hereafter named, will be offered positions with the Town of Waynesville for which they are qualified, with no loss of salary or seniority. Following merger, they shall be entitled to the same rights and fringe benefits as all other employees of the Town of Waynesville in accordance with the personnel regulations approved by the Mayor and Board of Aldermen of the Town of Waynesville.

Janice Shulhofer	Bennie Moody
Gladys Crouser	Tommy Higgins
Kenneth Hampton	Billy Luther
G. Thomas Sutton	Hank Ruff
Brian Buchanan	Ralph Moody

The Mayor and Board of Aldermen of the Town of Hazelwood shall not hire any person other than those listed above for a period which will extend beyond June 30, 1995; however, the Town of Waynesville will consider the qualifications of any such employee in filling vacancies in their workforce which exist after merger.

The Mayor and Board of Aldermen of the Town of Hazelwood shall not grant a pay increase to any employee named in this section unless such an increase is in accordance with the personnel policies of the Town of Hazelwood and only if adequate funds are provided in the Town's budget for that purpose. The Town of Waynesville shall not otherwise be responsible for any personnel increase granted by the Town of Hazelwood after October 25, 1994.

"Sec. 7.6. *Hazelwood Town Hall.* The Town of Waynesville will continue to use the existing Hazelwood Town Hall for purposes which

benefit the citizens of the merged town, including, but not limited to, the operation of a business office and drive-up window. The Waynesville Fire Department will establish and operate a fire substation at that location, providing equipment and personnel to staff the facility at the level consistent with budgetary limitations.

"Sec. 7.7. *Renaming of Streets/Recreational Facilities.* The Mayor and Board of Aldermen of the Town of Hazelwood will rename those Hazelwood streets carrying the same name as streets within the Town of Waynesville, and what is presently Main Street in Hazelwood will become 'Hazelwood Avenue'.

The Hazelwood Recreation Park will retain its name, as will the 'C. L. "Dutch" Fisher Memorial Ball Field', which is located at that park.

The Town of Waynesville will encourage the perpetuation of a sense of community and the use of the name 'Hazelwood' where appropriate.

"Sec. 7.8. *Building Permits.* For all building permits issued in the Town of Hazelwood prior to July 1, 1995, and which are not in conflict with subdivision 7.3(4) of this Article, the Haywood County Building Inspections Department will complete the inspections on the work permitted. Work which commences on or after July 1, 1995, for which any type of permits is required, shall be under the Waynesville Building Inspections Department."

Sec. 2. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 30th day of May, 1995.

H.B. 751 **CHAPTER 127**

AN ACT TO ALLOW A CONTRACT BETWEEN A REAL ESTATE BROKER AND A REAL ESTATE SALESMAN TO INCLUDE A PROVISION TO REIMBURSE THE REAL ESTATE BROKER FOR THE COST OF INCLUDING THE SALESMAN UNDER THE BROKER'S WORKERS' COMPENSATION COVERAGE OF THE BROKER'S BUSINESS.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 93A of the General Statutes is amended by adding a new section to read:

"*§ 93A-11. Reimbursement by real estate independent contractor of brokers' workers' compensation.*

(a) Notwithstanding the provisions of G.S. 97-21 or any other provision of law, a real estate broker may include in the governing contract with a real estate salesman whose nonemployee status is recognized pursuant to section 3508 of the United States Internal Revenue Code, 26 U.S.C. § 3508, an agreement for the salesman to reimburse the broker for the cost of covering that salesman under the broker's workers' compensation coverage of the broker's business.

(b) Nothing in this section shall affect a requirement under any other law to provide workers' compensation coverage or in any manner exclude from coverage any person, firm, or corporation otherwise subject to the provisions of Article 1 of Chapter 97 of the General Statutes."

Sec. 2. This act is effective upon ratification and applies to any governing contract between a real estate broker and a real estate salesman entered into on or after that date.

In the General Assembly read three times and ratified this the 30th day of May, 1995.

S.B. 476 **CHAPTER 128**

AN ACT TO CHANGE THE MANNER OF ELECTION OF THE ASHE COUNTY BOARD OF EDUCATION FROM NONPARTISAN ELECTION AT THE TIME OF THE PRIMARY TO NONPARTISAN ELECTION AT THE TIME OF THE GENERAL ELECTION.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 115C-37, the Ashe County Board of Education shall be elected on a nonpartisan basis at the time set by G.S. 163-1 for the general election in each even-numbered year as terms expire. The election shall be conducted on a nonpartisan plurality basis, with the results determined in accordance with G.S. 163-292. Candidates shall file notices of candidacy not earlier than noon on the first Monday in June and not later than noon on the last Friday in July. The names of the candidates shall be printed on the ballot without reference to any party affiliations. Except as provided by this act, the election shall be conducted in accordance with the applicable provisions of Chapters 115C and 163 of the General Statutes.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of May, 1995.

S.B. 482 **CHAPTER 129**

AN ACT TO MAKE CERTAIN MISCELLANEOUS AMENDMENTS TO THE BANKING LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-1(3) reads as rewritten:

"(3) Insolvency. -- The term 'insolvency' means:

a. When a bank cannot meet its deposit liabilities as they become due in the regular course of business;

b. When the actual cash market value of its assets is insufficient to pay its liabilities to depositors and other creditors;

c. When its reserve shall fall under the amount required by this Chapter, and it shall fail to make good such reserve within 30 days after being required to do so by the Commissioner of Banks; or

d. Whenever the undivided profits and surplus shall be inadequate to cover losses of the bank, whereby an impairment of the capital stock is created."

Sec. 2. G.S. 53-18 reads as rewritten:

"§ 53-18. *Voluntary liquidation.*

A bank may go into voluntary liquidation and be closed, and may surrender its charter and franchise as a corporation of this State by the affirmative votes of its stockholders owning two thirds of its stock, such vote to be taken at a meeting of the stockholders duly called by resolution of the board of directors, written notice of which, stating the purpose of the meeting, shall be mailed to each stockholder, or in case of his death, to his legal representative or heirs at law, addressed to his last known residence 10 days previous to the date of said meeting. Whenever stockholders shall by such vote at a meeting regularly called for the purpose, notice of which shall be given as herein provided, decide to liquidate such bank, a certified copy of all proceedings of the meeting at which said action shall have been taken, verified by the oath of the president and ~~cashier,~~ secretary, shall be transmitted to the Commissioner of Banks for his approval. If the Commissioner of Banks shall approve the same, he shall issue to the said bank, under his seal, a permit for such purpose. No such permit shall be issued by the Commissioner of Banks until said Commissioner of Banks shall be satisfied that provision has been made by such bank to satisfy and pay off all depositors and all creditors of such bank. If not so satisfied, the Commissioner of Banks shall refuse to issue a permit, and shall be authorized to take possession of said bank and its assets and business, and hold the same and liquidate said bank in the manner provided in this Chapter. When the Commissioner of Banks shall approve the voluntary liquidation of a bank, the directors of said bank shall cause to be published in a newspaper in the ~~city, town, or~~ county in which such bank is located, or if no newspaper is published in such county, then in a newspaper having a general circulation in such county, a notice that the bank is closing up its affairs and going into liquidation, and notify its depositors and creditors to present their claims for payment. Such notice shall be published once a week for four consecutive weeks. When any bank shall be in process of voluntary liquidation, it shall be subject to examination by the Commissioner of Banks, and shall furnish such reports from time to time as may be called for by the Commissioner of Banks. All unclaimed deposits and dividends remaining in the hands of such bank shall be subject to the provisions of Chapter 116B. Whenever the Commissioner of Banks shall approve it, any bank may sell and transfer to any other bank, either State bank or national bank, all of its assets of every kind upon such terms as may be agreed upon and approved by the Commissioner of Banks and by two-thirds vote of its board of directors. A certified copy of the minutes of any meeting at which such action is taken, under the oath of the president and ~~cashier,~~ secretary, together with a copy of the contract of sale and transfer, shall be filed with the Commissioner of Banks. Whenever voluntary liquidation shall be approved by the Commissioner of Banks or the sale and transfer of the assets of any bank shall be approved by the Commissioner of Banks, a certified copy of such approval under seal of the Commissioner of Banks, filed in the office of the Secretary of State, shall authorize the cancellation of the charter of such bank, subject, however, to its continued existence, as provided by this Chapter and the general law relative to corporations."

Sec. 3. G.S. 53-19 reads as rewritten:

"§ 53-19. *When Commissioner of Banks may take charge.*

The Commissioner of Banks may forthwith take possession of the business and property of any bank to which this Chapter is applicable whenever it shall appear that such bank:

(1) Has violated its charter or any laws applicable thereto;
(2) Is conducting its business in an unauthorized or unsafe manner;
(3) Is in an unsafe or unsound condition to transact its business;
(4) Has an impairment of its capital stock;
(5) Has refused to pay its depositors in accordance with the terms on which such deposits were received, or has refused to pay its holders of certificates of indebtedness or investment in accordance with the terms upon which such certificates of indebtedness or investment were sold;
(6) Has become otherwise insolvent;
(7) Has neglected or refused to comply with the terms of a duly issued lawful order of the Commissioner of Banks;
(8) Has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination of a duly appointed or authorized examiner of the Commissioner of Banks;
(9) Its officers have refused to be examined upon oath regarding its affairs; or
(10) Has made a voluntary assignment of its assets to trustees.

Such banks may resume business as provided in G.S. 53-37."

Sec. 4. G.S. 53-20(j) reads as rewritten:

"(j) Notice and Time for Filing Claims; Copies Mailed. -- Notice shall be given by advertisement once a week for four consecutive weeks in a newspaper published in said county; if no newspaper is published in said county, then in some newspaper having a general circulation in said county, calling on all persons who may have claims against the bank to present the same to the Commissioner of Banks at the office of the bank, and within the time to be specified in the notice, not less, however, than 90 days from the date of the first publication. A copy of this notice shall be mailed to all persons whose names appear as creditors upon the books of the bank. Affidavit by the Commissioner of Banks, or agent mailing the notice, to the effect that said notice was mailed shall be conclusive evidence thereof."

Sec. 5. G.S. 53-20(r) reads as rewritten:

"(r) Action by Commissioner of Banks after Full Settlement. -- Whenever the Commissioner of Banks shall have paid all the expenses of liquidation and shall have paid to each and every depositor and creditor of such bank, whose claims shall have been duly proven and allowed, the full amount of such claims, and shall have made proper provision for unclaimed and unpaid deposits and disputed claims and deposits, and shall have in hand other assets of said bank, he shall call a meeting of the stockholders of said bank by giving notice thereof by publication once a week for four consecutive weeks in a newspaper published in said county, or if no newspaper is published in said county, then in a newspaper having general circulation in said county, and by mailing a copy of such notice to each stockholder addressed to him at his address as the same shall appear upon the books of the bank. Affidavit of the officer mailing the notice herein

required and of the printer as to the publication shall be conclusive evidence of notice hereunder. At such meeting any stockholders may be represented by proxy and the stockholders shall elect, by a majority vote of the stock present, an agent or agents who shall be authorized to receive from the Commissioner of Banks all the assets of said bank then remaining in his hands; and the Commissioner of Banks shall cause to be transferred and delivered to the said agent, or agents, all such assets of said bank. The Commissioner of Banks shall thereupon cause to be filed in the office of the clerk of the superior court in the pending actions a full and complete report of all his transactions, showing the assets of said bank so transferred, together with the name of the agent or agents receipting for the same; and the filing of such report shall act as a full and complete discharge of the Commissioner of Banks from all further liabilities by reason of the liquidation of the bank. Such agent, or agents, shall convert the assets coming into his hands, or their hands, into cash, and shall make distribution to the stockholders of said bank as herein provided. Said agent, or agents, shall file semiannually a report of all transactions with the superior court of the county in which the bank is located, and with the Commissioner of Banks, and shall be allowed for such services such fees not in excess of five percent (5%), as may be fixed by the court. In case of death, removal or refusal to act, of any agent or agents elected by the stockholders, the Commissioner of Banks shall, upon report of such action on the part of such agent or agents to the superior court of the county in which the bank is located, turn over to said superior court for the stockholders of said bank, all the remaining assets of the bank, file his report and be discharged from any and all further liability to the stockholders as herein provided. Said assets, when turned over to the superior court hereunder, shall remain in the hands of the superior court until such time as, by order of court or by action of the stockholders, distribution shall be provided for."

Sec. 6. G.S. 53-26 reads as rewritten:

"*§ 53-26. Petition for new trustee; service upon parties interested.*

In all cases of such insolvency and liquidation mentioned in G.S. 53-25, the clerk of the superior court of any county in which such indenture, deed of trust or other instrument of like character is recorded shall, upon the verified petition of any person interested in any such trust, either as trustee, beneficiary or otherwise, which interest shall be set out in said petition, enter an order directing service on all interested parties either personally or by the publication in ~~some~~ a newspaper published in the county, or ~~in some adjoining county~~ if no newspaper is published in the county where such application is made, then in a newspaper having a general circulation in such county, of a notice directed to all persons concerned, commanding and requiring all persons having any interest in said trust, to be and appear at his office at a day designated in said order and notice, not less than 30 days from the date thereof, and show cause why a new trustee shall not be appointed."

Sec. 7. G.S. 53-37 reads as rewritten:

"*§ 53-37. Conditions under which banks may reopen.*

Whenever the Commissioner of Banks has taken in possession any bank, such bank may, with the consent of the Commissioner of Banks, resume

business upon such terms and conditions as may be approved by the State Banking Commission. When such banks have been taken in possession under the provisions of G.S. 53-20, subsections (a) or (b), such conditions shall be fully stated in writing and a copy thereof shall be filed with the clerk of the superior court in the action required to be commenced in such cases against said bank under the provisions of G.S. 53-20, subsection (c): Provided, however, no bank or banking institution which has been taken in possession by the Commissioner of Banks under the provisions of the State banking laws shall be reopened to receive deposits or for the transaction of a banking business unless and until:

(1) The bank has been completely restored to solvency;

(2) The capital stock, if impaired, has been entirely restored in cash; or

(3) It shall clearly appear to the Commissioner of Banks that such bank may be reopened with safety to the public and such reopening is necessary to serve the business interests of the community."

Sec. 8. G.S. 53-42 reads as rewritten:

"*§ 53-42. Impairment of capital; assessments, etc.*

The Commissioner of Banks shall notify every bank whose capital shall have become impaired from losses or any other cause, and the surplus and undivided profits of such bank are insufficient to make good such impairment, to make the impairment good within 60 days of such notice by an assessment upon the stockholders thereof, and it shall be the duty of the officers and directors of the bank receiving such notice to immediately call a special meeting of the stockholders for the purpose of making an assessment upon its stockholders sufficient to cover the impairment of the capital, payable in cash, at which meeting such assessment shall be made: Provided, that such bank may reduce its capital to the extent of the impairment, as provided in G.S. 53-11. If any stockholder of such bank neglects or refuses to pay such assessment as herein provided, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such stockholder or stockholders to be sold at public auction, upon 30 days' notice given by posting such notice of sale in the office of the bank and by publishing such notice in a newspaper in the ~~place~~ county where the bank is located, and if none therein, a newspaper ~~circulating~~ having general circulation in the county in which the bank is located, to make good the deficiency, and the balance, if any, shall be returned to the delinquent shareholder or shareholders. If any such bank shall fail to cause to be paid in such deficiency in its capital stock for three months after receiving such notice from the Commissioner of Banks, the Commissioner of Banks may forthwith take possession of the property and business of such bank until its affairs be finally liquidated as provided by law. A sale of stock, as provided in this section, shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and shall make the certificate null and void, and a new certificate shall be issued by the bank to the purchaser of such stock."

Sec. 9. G.S. 53-43(3) reads as rewritten:

"(3) To purchase, hold, and convey real estate for the following purposes:

a. Such as shall be necessary for the convenient transaction of its business, including furniture and fixtures, with its banking offices and other spaces to rent as a source of income, which investment shall not exceed fifty percent (50%) of its unimpaired capital fund: Provided, that this fifty percent (50%) limitation shall not apply to banking houses, furniture and fixtures leased for the purposes set forth in this subdivision. Provided, further, that if any bank shall demonstrate to the satisfaction of the Commissioner of Banks that an investment of more than fifty percent (50%) of its unimpaired capital fund in its banking houses, furniture and fixtures, would promote the convenience of the general public in transacting its banking business and would not adversely affect the financial stability of the bank, the Commissioner of Banks may, in his discretion, authorize any bank to invest more than fifty percent (50%) of its unimpaired capital fund in its banking houses, furniture and fixtures.

b. Such as is mortgaged to it in good faith by way of security for loans made or moneys due to such banks.

c. Such as has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or in settlements affecting security of such debts. All real property referred to in this subdivision shall be sold by such bank within ~~one year~~ five years after it is acquired unless, upon application by the board of directors, the Commissioner of Banks extends the time within which such sale shall be made. Any and all powers and privileges heretofore granted and given to any person, firm, or corporation doing a banking business in connection with a fiduciary and insurance business, or the right to deal to any extent in real estate, inconsistent with this Chapter, are hereby repealed."

Sec. 10. G.S. 53-46 reads as rewritten:

"*§ 53-46. Limitations on investments in securities.*

The investment in any bonds or other debt obligations of any one firm, individual, or corporation, unless it be the obligations of the United States, or agency thereof, or other obligations guaranteed by the United States Government, State of North Carolina, or other state of the United States, ~~or of some city, town, township, county, school district,~~ or other political subdivision of the State of North Carolina, or other state of the United States in which the bank maintains a branch, shall at no time ~~be more than twenty percent (20%) of the unimpaired capital fund of any bank to an amount not in excess of two hundred fifty thousand dollars ($250,000); and not more than ten percent (10%) of the unimpaired capital fund in excess of two hundred fifty thousand dollars ($250,000).~~ exceed fifty thousand dollars ($50,000) plus ten percent (10%) of all amounts in excess of two hundred fifty thousand dollars ($250,000) of the bank's unimpaired capital fund."

Sec. 11. Article 6 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"*§ 53-46.1. Investments in mutual funds.*

Subject to rules adopted by the Banking Commission, a bank may invest a portion of its unimpaired capital in mutual funds. Any limitation imposed by rule on the amount of such investment shall be in addition to a bank's limitations on investment in stocks provided in G.S. 53-47."

Sec. 12. G.S. 53-54 reads as rewritten:

"*§ 53-54. Transactions not performed during banking hours.*

Nothing in any law of this State shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank in this State, because done or performed during any time other than regular banking ~~hours: Provided, that nothing herein shall be construed to compel any bank in this State, which by law or custom is entitled to close at 12 noon on any Saturday, or for the whole part day of any legal holiday, to keep open for the transaction of business, or to perform any of the acts or transactions aforesaid on any Saturday after such hour or on any legal holiday, except at its option,~~ hours. Nothing herein shall be construed to require a bank doing business in this State to be open when it may otherwise lawfully be closed or to prohibit a bank from conducting a transaction at times other than its regularly scheduled hours of operation."

Sec. 13. G.S. 53-62(e) reads as rewritten:

"(e) ~~A bank may discontinue a branch office upon resolution of its board of directors or board of managers. Upon the adoption of such a resolution, the bank shall file a certification with the Commissioner of Banks specifying the location of the branch office to be discontinued and the date upon which it is proposed that the discontinuance shall be effective. This certificate must state the reasons for the closing of such branch and indicate that the needs and conveniences of the community would still be adequately met. Notice stating the intention to discontinue said branch shall be published in a newspaper serving such community once a week for four consecutive weeks before any certificate requesting discontinuance is filed with the Commissioner of Banks. No such branch may be discontinued until approved by the Commissioner of Banks, who shall first hold a public hearing thereon, if so requested by any interested party.~~

A bank may, upon resolution by the board of directors, discontinue a branch office subject to the following:

(1) The bank shall notify the Commissioner in writing of its intent to close a branch not later than 90 days prior to the proposed closing date. Such notice shall include a detailed statement of the reasons for the decision to close a branch and statistical or other information in support of such reasons.

(2) The bank shall provide a notice of its intent to close a branch to its customers. Such notice shall be posted in a conspicuous manner on the branch premises for a period of 30 days prior to the proposed closing date, and shall either be included in at least one of any regular account statements mailed to customers of such

branch, or in a separate mailing to such customers. The later notice shall be given at least 90 days prior to the proposed closing date.

No branch shall be closed until approved by the Commissioner of Banks, provided, however, the consolidation of two or more branches into a single location in the same vicinity shall not be considered a closure subject to the provisions of this subsection."

Sec. 14. G.S. 53-63 reads as rewritten:

"*§ 53-63. Unlawful issuing of certificate of deposit.*

It shall be unlawful for any bank to issue any certificate of deposit or other negotiable instrument of its indebtedness to the holder thereof except for lawful money of the United States, checks, drafts, or bills of exchange which are the actual equivalent of such ~~money; nor shall such moneys, checks, drafts, or bills of exchange be the proceeds of any note given in payment of the purchase price of any stock.~~ money. Any officer or employee of any bank violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

Sec. 15. G.S. 53-77.1A reads as rewritten:

"*§ 53-77.1A. Days and hours of operation.*

~~(a) A bank as defined at G.S. 53-1 or G.S. 53-136, including national banking associations and Federal Reserve banks, or any branch of the foregoing, located in this State, shall operate not less than five days per week. On one day of the week each bank and its branches shall remain open for not less than seven hours, three of which shall be after 3 o'clock p.m.~~

~~(b) In addition to the minimum hours required of a bank and its branches in subsection (a), a bank and its branches may operate on such days and during such hours as the bank deems appropriate.~~

~~(c) A limited service facility may operate on such days of the week and during such hours as the bank deems appropriate.~~

~~(d) A bank shall give such notice of the days and hours during which it and its branches and limited service facilities shall operate as required by the Commissioner of Banks.~~ Except as provided in G.S. 53-77.2A, a bank as defined in G.S. 53-1 or G.S. 53-136, including national banking associations and federal reserve banks, or any branch or limited service facility of the foregoing located in this State, may operate on such days and during such hours as the board of directors shall designate."

Sec. 16. G.S. 53-78 reads as rewritten:

"*§ 53-78. Appointment of executive and loan committees by directors.*

The board of directors shall appoint an executive committee or committees, each of which shall be composed of at least three of its members with such duties and powers as are defined by the regulations or bylaws, who shall serve until their successors are appointed. Such executive committee or committees shall meet as often as the board of directors may require, except that the executive committee or committees shall meet at least once during each month in which there is no meeting of the board of directors, and approve or disapprove all loans and investments. All loans and investments shall be made under such rules and regulations as the board of directors may prescribe.

The board of directors may appoint, in addition to the executive committee or committees, a general loan committee, the membership of which shall include at least three directors and such officers of the bank as may be appointed, with such duties and powers with respect to making loans and investments as are defined in the bylaws or by resolution of the board of directors, the members of such general loan committee to serve until their successors are appointed. Such general loan committee, if appointed, shall meet as often as the bylaws or resolution of the board of directors may require, which shall not be less frequently than once each month, and approve or disapprove all such loans and investments as may be required by the bylaws or by resolution of the board of directors to be submitted to the general loan committee. The board of directors of any bank, which has branches, may appoint, in addition to a general loan committee, a loan committee for the parent bank and for any branch, each of which committees shall include at least three members who are officers or members ~~of the board of managers~~ of the local advisory board for such parent bank or branch, with such duties and powers with respect to approving or disapproving loans and investments as may be defined in the bylaws or by resolution of the board of directors, and under such rules and regulations as the board of directors may prescribe. Such loans and investments as are authorized or approved by a general loan committee or either of the other loan committees hereinabove provided for may, but need not, be approved or disapproved by the executive committee or committees. All loans and investments made, however, shall be authorized or approved by either the executive committee or committees, a general loan committee, or one of the other loan committees herein provided for."

Sec. 17. G.S. 53-91 is repealed.

Sec. 18. Article 7 of Chapter 53 of the General Statutes is amended by adding two new sections to read:

"*§ 53-91.2. Loans to executive officers.*

No bank may extend credit to any of its executive officers nor a firm or partnership of which such executive officer is a member, nor a company in which such executive officer owns a controlling interest, unless the extension of credit is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank with persons who are not employed by the bank, and provided further that the extension of credit does not involve more than the normal risk of repayment. For the purposes of this section, the term 'executive officer' shall mean an officer who has authority to participate in major policy-making functions of the bank. Provided further, the maximum amount of such loans shall be that as prescribed by applicable federal banking regulations.

"*§ 53-91.3. Directors defined; appointment of advisory directors.*

(a) Unless otherwise expressly provided, reference to 'director' or 'board of directors' shall mean a director of the banking corporation as elected by the shareholders pursuant to North Carolina corporation law.

(b) The board of directors so elected by the shareholders may, consistent with a bank's articles of incorporation or bylaws, appoint advisory directors to perform such duties as prescribed by the board with respect to local

offices and branches of any bank chartered under Chapter 53 of the General Statutes."

Sec. 19. G.S. 53-92.1 reads as rewritten:

"*§ 53-92.1. Commission bound by requirements imposed on Commissioner as to certification of new banks, establishment of branches, etc.*

Notwithstanding any other provisions of this Chapter, the State Banking Commission, in the exercise of its authority to review the action of the Commissioner of Banks, shall be bound by the requirements, conditions and limitations imposed in this Chapter on said Commissioner as to the certification of new banks or the establishments of branch banks or ~~teller's windows.~~ limited service facilities."

Sec. 20. G.S. 53-93.1 reads as rewritten:

"*§ 53-93.1. Deputy commissioner.*

The Commissioner of Banks shall appoint, with approval of the Governor, and may remove at his discretion a deputy commissioner, who, in the event of the absence, death, resignation, disability or disqualification of the Commissioner of Banks, or in case the office of Commissioner shall for any reason become vacant, shall have and exercise all the powers and duties vested by law in the Commissioner of Banks.

Irrespective of the conditions under which the deputy commissioner may exercise the powers and perform the duties of the Commissioner of Banks, pursuant to the preceding paragraph, such deputy commissioner, in addition thereto, is hereby authorized and empowered at any and all times, at the discretion of the Commissioner of Banks, to perform such duties and exercise such powers of the Commissioner of Banks in the name of and on behalf of the Commissioner as the Commissioner, in his discretion, may direct.

~~This section is not to be construed to modify the provisions of G.S. 53-97.~~"

Sec. 21. G.S. 53-99 is amended by adding a new subsection to read:

"(d) Nothing in this section of the law shall prohibit a bank, upon approval of the Commissioner of Banks, from disclosing to an insurance carrier, for the purpose of obtaining insurance coverage required by Chapter 53 of the General Statutes, the bank's regulatory rating prepared by the Commissioner's office. Provided however, the insurance underwriter must agree in writing to maintain the confidentiality of such information and to not disclose the same in any manner whatsoever."

Sec. 22. G.S. 53-105 reads as rewritten:

"*§ 53-105. Reports of condition.*

Every bank shall make to the Commissioner of Banks not less than four reports during each year in the manner and form prescribed by the Commission by regulation. Each such report shall exhibit in detail and under appropriate heads the resources, assets, and liabilities of such bank at the close of business on any past day by the Commissioner of Banks specified, and shall be transmitted to the Commissioner of Banks within 10 days after the receipt of a request or requisition therefor from the Commissioner of Banks; provided, however, the Commissioner of Banks may extend the time for a period not to exceed 30 days for any bank to transmit the reports heretofore required whenever in his judgment such

extension is necessary; and in a form prescribed by the Commissioner of Banks; a summary of ~~such report~~ the report for the quarter ending December 31, shall if required by the Commissioner of Banks, be published in a newspaper published in the ~~place~~ county where the bank is located, or if there is no newspaper in the ~~place,~~ county, then in ~~the nearest one published thereto~~ a newspaper having a general circulation in the county in which such bank is established. Proof of such publication shall be furnished the Commissioner of Banks in such form as may be prescribed by him."

Sec. 23. G.S. 53-106 reads as rewritten:

"*§ 53-106. Special reports.*

The Commissioner of Banks may call for special reports whenever in his judgment it is necessary to inform him of the condition of any bank, or to obtain a full and complete knowledge of its affairs. Said reports shall be in and according to the form prescribed by the Commissioner of ~~Banks, and shall be verified in the manner provided in G.S. 53-105,~~ Banks and shall be published ~~as therein provided,~~ as provided in G.S. 53-105, if so required by the Commissioner of ~~Banks so to be.~~ Banks. The Commissioner of Banks may extend the time for filing special reports for a period not to exceed 30 days."

Sec. 24. G.S. 53-114 reads as rewritten:

"*§ 53-114. Other powers of State Banking Commission.*

In addition to all other powers conferred upon and vested in the State Banking Commission, the said Commission, with the approval of the Governor, is hereby authorized, empowered and directed, whenever in its judgment the circumstances warrant it:

(1) To authorize, permit, and/or direct and require all banking corporations under its supervision, to extend for such period and upon such terms as it deems necessary and expedient, payment of any demand and/or time deposits.

(2) To direct, require or permit, upon such terms as it may deem advisable, the issuance of ~~clearinghouse certificates or other evidences~~ evidence of claims against assets of such banking institutions.

(3) To authorize and direct the creation, in such banking institutions, of special trust accounts for the receipt of new deposits, which deposits shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separate in cash or on deposit in such banking institutions as it shall designate or invested in such obligations of the United States and/or the State of North Carolina as it shall designate.

(4) To adopt for such banking institutions such regulations as are necessary in its discretion to enable such banking institutions to comply fully with the federal regulations prescribed for national or state banks."

Sec. 25. G.S. 53-125 reads as rewritten:

"*§ 53-125. Examiners disclosing confidential information.*

If any bank examiner or other employee of the Commissioner of Banks fails to keep secret the facts and information obtained in the course of an examination of a bank, except when the public duty of such examiner or

employee requires him to report upon or take official action regarding the affairs of such bank, he shall be guilty of a Class 1 misdemeanor. Nothing in this section shall prevent the proper exchange of information with the representatives of the banking departments of other states, with the federal reserve bank or national bank examiners, or other authorities, with the creditors of such bank or others with whom a proper exchange of information is wise or ~~necessary, or with the clearinghouse officials and examiners.~~ necessary."

Sec. 26. G.S. 53-141 reads as rewritten:

"*§ 53-141. Powers.*

Industrial banks shall have the powers conferred by paragraphs 1, 2, 3, 5 and 7 of G.S. 55-17 [subdivisions (1), (2), (3), (5) and (7) of subsection (a) of G.S. 55-17], and subdivision (3) of G.S. 53-43, such additional powers as may be necessary or incidental for the carrying out of their corporate purposes, and in addition thereto the following powers:

(1) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of indebtedness, and to loan money on real or personal security, and to purchase notes, bills of exchange, acceptances or other choses in action, and to take and receive interest or discounts subject to G.S. 53-43(1).

(2) To make loans and charge and receive interest at rates not exceeding the rates of interest provided in G.S. 24-1.1 and 24-1.2.

(3) To establish branch offices or places of business within the county in which its principal office is located, and elsewhere in the State, after having first obtained the written approval of the Commissioner of Banks, which approval may be given or withheld by the Commissioner of Banks in his discretion. The Commissioner of Banks, in exercising such discretion, shall take into account, but not by way of limitation, such factors as the financial history and condition of the applicant bank, the adequacy of its capital structure, its future earnings prospects, and the general character of its management. Such approval shall not be given until he shall find

a. That the establishment of such branch or ~~teller's window~~ limited service facility will meet the needs and promote the convenience of the community to be served by the bank, and

b. That the probable volume of business and reasonable public demand in such community are sufficient to assure and maintain the solvency of said branch or ~~teller's window~~ limited service facility and of the existing bank or banks in said community.

Provided, that the Commissioner of Banks shall not authorize the establishment of any branch the paid-in capital of whose parent bank is not sufficient in amount to provide for capital in an amount equal to that required with respect to the establishment of branches of commercial banks under the provisions of G.S. 53-62. For the purposes of this paragraph, the provisions of G.S. 53-62 as to the meaning of the word 'capital' shall be applicable.

A bank may discontinue a branch office upon resolution of its board of ~~directors or board of managers.~~ directors. Upon the adoption of such a resolution, the bank shall ~~file a certification with the Commissioner of Banks specifying the location of the branch office to be discontinued and the date upon which it is proposed that the discontinuance shall be effective. This certificate must state the reasons for the closing of such branch and indicate that the needs and convenience of the community would still be adequately met. Notice stating the intention to discontinue the said branch shall be published in a newspaper serving said community once a week for four consecutive weeks before a certificate requesting a discontinuance is filed with the Commissioner of Banks. No such branch may be discontinued until approved by the Commissioner of Banks, who shall first hold a public hearing thereon, if so requested by any interested party.~~ follow the procedures for closing a branch as set forth at G.S. 53-62(e). No branch shall be closed until approved by the Commissioner of Banks.

(4) Subject to the approval of the Commissioner of Banks and on the authority of its board of directors, or a majority thereof, to enter into such contract, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges, which may at any time be available or inure to banking institutions, or to their depositors, creditors, stockholders, conservators, receivers or liquidators, by virtue of those provisions of section eight of the Federal Banking Act of 1933 (section twelve B of the Federal Reserve Act as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or any other act or resolution of Congress to aid, regulate or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, to subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation and to comply with the lawful regulations and requirements from time to time issued or made by such corporations.

(5) To solicit, receive and accept money or its equivalent on deposit both in savings accounts and upon certificates of deposit.

(6) Subject to the approval of the State Banking Commission, to solicit, receive and accept money or its equivalent on deposit subject to check; provided, however, no such approval shall be given unless and until such industrial bank meets the capital requirements of a commercial bank as set forth in G.S. 53-2."

Sec. 27. G.S. 53-145 reads as rewritten:

"*§ 53-145. Sections of general law applicable.*

Sections 53-1, 53-3, 53-4, 53-5, 53-6, 53-7, 53-8, 53-9, 53- 10, 53-11, 53-12, 53-13, 53-18, 53-20, 53-22, 53-23, 53-42, 53-42.1, 53-47, 53-50,

53-51, 53-54, 53-63, 53-64, 53-67, 53-68, 53-70, 53-71, ~~53-72,~~ 53-73, ~~53-74,~~ 53-78, 53-79, 53-80, 53-81, 53-82, 53-83, 53-85, 53-87, 53-88, 53-90, ~~53-91,~~ 53-91.2, 53-91.3, 53-105, 53-106, 53-107, 53-108, 53-109, 53-110, 53-111, 53-112, 53-117, 53-118, 53-119, 53-120, 53-121, 53-122, 53-123, 53-124, 53-125, 53-126, 53-128, 53-129, 53-132, 53-133, 53-134, relating to the supervision and examination of commercial banks, shall be construed to be applicable to industrial banks, insofar as they are not inconsistent with the provisions of this Article. Sections 53-19, 53-24, 53-37, 53-39, 53-40, 53-41, 53-44, 53-45, ~~53-58, 53-59,~~ 53-61, ~~53-66,~~ 53-75, 53-76, 53-77, 53-86, 53-113, 53-114, 53-115, 53-116, 53-135, 53-146, and 53-148 through 53-158, relating to commercial banks, shall be construed to be applicable to industrial banks."

Sec. 28. G.S. 53-153 reads as rewritten:

"*§ 53-153. Segregation of recent deposits not effective after bank turned back to officers; notice of turning bank back to officers.*

After 15 days after the affairs of a bank shall have been turned back to its board of directors by the conservator, either with or without a reorganization as provided in G.S. 53-152 hereof, the provisions of G.S. 53-151 with respect to the segregation of deposits received while it is in the hands of the conservator, and with respect to the use of such deposits to liquidate the indebtedness of such bank, shall no longer be effective: Provided, that before the conservator shall turn back the affairs of the bank to its board of directors, he shall cause to be published in a newspaper published in the ~~city, town or~~ county in which such bank is located, and if no newspaper is published in such ~~city, town or~~ county, in a newspaper ~~to be selected by the Commissioner of Banks,~~ having a general circulation in such county, a notice in form approved by the Commissioner of Banks, stating the date on which the affairs of the bank will be returned to its board of directors, and that the said provisions of G.S. 53-151 will not be effective after 15 days after such date; and on the date of publication of such notice, the conservator shall immediately send to every person who is a depositor in such bank under G.S. 53-151, a copy of such notice by registered mail, addressing it to the last known address of such persons shown by the records of the bank; and the conservator shall send similar notice in like manner to every person making deposit in such bank under G.S. 53-151, after the date of such newspaper publication and before the time when the affairs of the bank are returned to its directors."

Sec. 29. G.S. 53-188 reads as rewritten:

"*§ 53-188. Review of regulations, order or act of Commission or Commissioner.*

The Commission shall have full authority to review any rule, regulation, order or act of the Commissioner done pursuant to or with respect to the provisions of this Article and any person aggrieved by any such rule, regulation, order or act may appeal to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order or act complained of is adopted, issued or done. Notwithstanding any other provision of law to the contrary, any aggrieved party to a decision of the Commission shall be entitled to an appeal pursuant to G.S. 53-92."

Sec. 30. G.S. 53-206 reads as rewritten:

"*§ 53-206. Notice of denial or revocation of license; hearing; appeal.*

(a) No license shall be denied or revoked except on 10 days' notice to the applicant or licensee. Upon receipt of such notice the applicant or licensee may, within five days of such receipt, make written demand for a hearing. The hearing before the Commissioner shall be an informal hearing and shall be held with reasonable promptness. ~~The decision of the Commissioner may be appealed to the Banking Commission.~~

(b) The Banking Commission shall have full authority to review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article; and any person aggrieved by any such rule, regulation, order, or act may appeal to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92."

Sec. 31. G.S. 53-229 is repealed.

Sec. 32. G.S. 53-230 reads as rewritten:

"*§ 53-230. Rules.*

~~Notwithstanding the provision of G.S. 53-95, the Commissioner~~ The Banking Commission may ~~promulgate~~ adopt such reasonable rules as may be necessary to effectuate the purposes of this Article."

Sec. 33. G.S. 53-231 reads as rewritten:

"*§ 53-231. Appeal of Commissioner's decision.*

~~Notwithstanding any other provision of law, any aggrieved party may, within 30 days after final decision of the Commissioner and by written notice to the Commissioner, appeal directly to the North Carolina Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the Court of Appeals within 30 days thereafter. Such record shall include all memoranda, briefs and any other documents, data, information or evidence submitted by any party to such proceeding except for material such as trade secrets normally not available through commercial publication for which such party has made a claim of confidentiality and requested exclusion from the record which the Commissioner deems confidential. All factual information contained in any report of examination or investigation submitted to or obtained by the Commissioner's staff shall also be made a part of the record unless deemed confidential by the Commissioner.~~ Any aggrieved party in a proceeding under this Article may, within 30 days after final decision of the Commissioner, appeal such decision to the Banking Commission. The Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove, or modify the Commissioner's decision. Failure of the Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the Banking Commission approving the decision of the Commissioner. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92."

Sec. 34. G.S. 53-232.17 reads as rewritten:

"*§ 53-232.17. Appeal of Commissioner's decision.*

~~Notwithstanding any other law, an aggrieved party may, within 30 days after final decision of the Commissioner and by written notice to the Commissioner, appeal directly to the North Carolina Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the Court of Appeals within 30 days thereafter. The record shall include all memoranda, briefs, and any other documents, data, information, or evidence submitted by any party to the proceeding, except for material such as trade secrets normally not available through commercial publication of which the party has made a claim of confidentiality and requested exclusion from the record which the Commissioner deems confidential. All factual information contained in any report of examination or investigation submitted to or obtained by the Commissioner's staff is also made a part of the record unless deemed confidential by the Commissioner.~~ Any aggrieved party in a proceeding under this Article may, within 30 days after final decision of the Commissioner, appeal such decision to the Banking Commission. The Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove, or modify the Commissioner's decision. Failure of the Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the Banking Commission approving the decision of the Commissioner. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92."

Sec. 35. G.S. 53-234(6) reads as rewritten:

"(6) 'Exempt person or organization' means:

(a) Any lender authorized to engage in business as a bank, a farm credit system, life insurance company, savings institution, ~~or~~ credit union, or HUD-approved mortgagee under the laws of the United States or the State of North Carolina and subsidiaries and affiliates of such lenders, which subsidiaries and affiliates are subject to the general supervision or regulation of the lender or subject to audit or examination by a regulatory body or agency of the United States or the State of North Carolina; the entities listed in this sub-subdivision, and their officers and employees, are not subject to any of the provisions of this Article; or

(b) Any licensed real estate agent or broker, who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives direct compensation or income in connection with the placement of a mortgage loan; or

(c) Any person who, as seller, receives in one calendar year no more than ten mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation; or

(d) The North Carolina Housing Finance Agency as established by Chapter 122A of the General Statutes and the North

Carolina Agricultural Finance Authority as established by Chapter 122D of the General Statutes; or

(e) Any agency of the federal government or any state or municipal government granting first mortgage loans under specific authority of the laws of any state or the United States."

Sec. 36. G.S. 53-235(b) reads as rewritten:

"(b) No mortgage broker, as defined in G.S. 53-234(4), shall engage in the business of processing, placing or negotiating a mortgage loan or offering to process, place or negotiate a mortgage loan in this State without first being registered with the Commissioner in accordance with the registration procedure provided in this Article and such regulations as may be promulgated by the ~~Commissioner.~~ Commissioner; provided, however, any person or entity registered as a mortgage banker pursuant to subsection (a) of this section shall not be required to separately register as a mortgage broker to engage in such activity."

Sec. 37. G.S. 53-240 reads as rewritten:

"*§ 53-240. Appeal of Commissioner's decision.*

~~Notwithstanding any other provision of law, any aggrieved party may, within 30 days after final decision of the Commissioner and by written notice to the Commissioner, appeal directly to the North Carolina Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the Court of Appeals within 30 days thereafter. Such record shall include all memoranda, briefs and any other documents, data, information or evidence submitted by any party to such proceeding except for material such as trade secrets normally not available through commercial publication for which such party has made a claim of confidentiality and requested exclusion from the record which the Commissioner deems confidential. All factual information contained in any report of examination or investigation submitted to or obtained by the Commissioner's staff shall also be made a part of the record unless deemed confidential by the Commissioner.~~ The Banking Commission shall have full authority to review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article; and any person aggrieved by any such rule, regulation, order, or act may appeal to the Banking Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92."

Sec. 38. G.S. 53-241 reads as rewritten:

"*§ 53-241. Rules and regulations.*

~~Notwithstanding the provision of G.S. 53-95, the Commissioner~~ The Banking Commission may ~~promulgate~~ adopt such reasonable rules and regulations as may be necessary to effectuate the purpose of this Article, to provide for the protection of the borrowing public, and to instruct mortgage lenders in interpreting this Article."

Sec. 39. G.S. 53-248 reads as rewritten:

"*§ 53-248. Registration ~~procedure.~~ procedure; informal hearing.*

(a) Initial Registration. An application to become registered as a facilitator shall be in writing, under oath, and in a form prescribed by the Commissioner. The application shall contain all information prescribed by the Commissioner. Each application for registration shall be accompanied by a fee, payable to the Commissioner, of two hundred fifty dollars ($250.00) for each office where the registrant intends to facilitate refund anticipation loans.

Upon the filing of an application for registration, if the Commissioner finds that the responsibility and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business of facilitating refund anticipation loans will be operated within the purposes of this Article, the Commissioner shall register the applicant as a facilitator of refund anticipation loans and shall issue and transmit to the applicant a certificate attesting to the registration. If the Commissioner does not so find, he shall not register the applicant and shall notify the applicant of the reasons for the denial.

Upon receipt of a certificate of registration, the applicant is registered under this Article and may engage in the business of facilitating refund anticipation loans at the offices identified on the application for registration.

(b) Renewal. Each registration as a facilitator of refund anticipation loans shall expire on December 31 following the date it was issued, unless it is renewed for the succeeding year. Before the registration expires, the registrant may renew the registration by filing with the Commissioner an application for renewal in the form and containing all information prescribed by the Commissioner. Each application for renewal of registration shall be accompanied by a fee of one hundred dollars ($100.00) for each office where the registrant intends to facilitate refund anticipation loans during the succeeding year.

Upon the filing of an application for renewal of registration under this Article, the Commissioner shall renew the registration unless the Commissioner determines that the fitness of the registrant or the operations of the registrant would not support registration of the registrant under subsection (a). If the Commissioner makes such a determination, he shall so notify the registrant, stating the reasons for the determination.

(c) Display of Certificate. Each registrant shall prominently display a certificate issued under this Article in each place of business in the State where the registrant facilitates the making of refund anticipation loans.

(d) Within five days of receipt of the Commissioner's notice, as required by subsections (a) and (b) of this section, the applicant may make written demand of the Commissioner for a hearing. The hearing before the Commissioner shall be an informal hearing and shall be held with reasonable promptness."

Sec. 40. G.S. 53-252 reads as rewritten:

"*§ 53-252. Appeal of Commissioner's decision.*

~~Notwithstanding any other provision of law, an aggrieved party may, within 30 days after a final decision of the Commissioner and with written notice to the Commissioner, appeal the decision directly to the North Carolina Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the~~

~~Court of Appeals within 30 days after receipt of notice of appeal. The record shall include all memoranda and briefs, and any other documents, data, information, or evidence submitted by any party to the proceeding except for material such as trade secrets normally not available through commercial publication for which a party has made a claim of confidentiality and requested exclusion from the record. All factual information contained in any report submitted to or obtained by the Commissioner's staff shall also be made a part of the record unless deemed confidential by the Commissioner.~~ The Commission shall have full authority to review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article; and any person aggrieved by any such rule, regulation, order, or act may appeal to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92."

Sec. 41. G.S. 53-253 reads as rewritten:

"*§ 53-253. Rules; enforcement.*

~~Notwithstanding the provisions of G.S. 53-95, the Commissioner~~ The Banking Commission may ~~promulgate~~ adopt reasonable rules as necessary to effectuate the purpose of this Article, to provide for the protection of the borrowing public, and to assist registrants in interpreting this Article. In order to enforce this Article, the Commissioner may make investigations, subpoena witnesses, require audits and reports, and conduct hearings regarding possible violations of its provisions."

Sec. 42. G.S. 53-272 reads as rewritten:

"*§ 53-272. (Expires October 1, 1995) Appeals.*

~~Notwithstanding any other provision of law, an aggrieved party may, within 30 days after final decision of the Commissioner, and by written notice to the Commissioner, appeal directly to the North Carolina Court of Appeals for judicial review of the record. In the event of an appeal the Commissioner shall certify the record to the Clerk of the Court of Appeals no later than 30 days after receipt of the notice of appeal. The record shall include all memoranda, briefs, and any other documents, data, information, or evidence submitted by any party to the proceeding. All factual information contained in a report of examination or investigation submitted to or otherwise obtained by the Commissioner or the Commissioner's staff shall be made a part of the record unless the information is deemed confidential by the Commissioner.~~ The Banking Commission shall have full authority to review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article; and any person aggrieved by any such rule, regulation, order, or act may appeal to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92."

Sec. 43. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of May, 1995.

S.B. 918 CHAPTER 130

AN ACT TO PERMIT THE STATE BOARD OF EDUCATION TO AUTHORIZE THE EMERGENCY CLOSING OF INDIVIDUAL SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-84(c) reads as rewritten:

"(c) There shall be operated in every school in the State a uniform school term of 180 days for instructing pupils. The school calendar for each local school administrative unit shall include days that can be used to make up any of the 180 days of the school term on which school is closed due to hazardous weather conditions, natural disaster, or other emergency; the required number of such days for a local school administrative unit shall be the greater of (i) five days or (ii) the average number of days missed in five of the last six school years in which the least number of days were missed. If a local school administrative unit has made up at least the required number of such days and if the local school board finds that it is impracticable to make up additional days, the local school board may excuse students from attendance for three such days; on the days excused for students, the local board may require teachers to report for a workday or it may excuse teachers from attendance on such days. The days excused for teachers under this paragraph do not have to be made up by teachers and do not affect teachers' pay. Local boards of education shall report all days excused for students, whether the days were excused for teachers, and the reason they were excused to the State Board of Education. This report shall include total days missed and the reason therefor, by date, and the total number of days made up, as justification for the local board's action in the matter.

After the required number of days have been made up within the school calendar and after the local board has exercised its authority to suspend days as set forth in the preceding paragraph, the State Board of Education, at the request of the local board of education, may suspend school additional days in any local school administrative unit where it finds that conditions justify such suspension of school. The State Board of Education may also, at the request of the local board of education, suspend one or more days from the 180 day school term for an individual school, regardless of how many days have been made up within the school calendar for the school unit as a whole, if emergency conditions exist at that school that might be threatening to the health, safety, and welfare of students and staff. The days excused under this paragraph do not have to be made up by teachers or students and the first 15 such days do not affect teachers' pay.

During any period of emergency, in any section of the State where the said emergency conditions make it necessary, the State Board of Education may order general, and if necessary, extended recesses or adjournment of the public schools."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st of May, 1995.

S.B. 1046 **CHAPTER 131**

AN ACT TO REMOVE CERTAIN PROPERTY FROM THE STATE NATURE AND HISTORIC PRESERVE AND TO AUTHORIZE THE DELETION OF VARIOUS PROPERTIES FROM THE STATE PARKS SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. Article 25B of Chapter 143 of the General Statutes is amended by adding the following new section to read:

"§ 143-260.10G. Removal of land in Crowders Mountain State Park from the State Nature and Historic Preserve.

(a) Notwithstanding the provisions of G.S. 143-260.10(6), the portion of that certain tract or parcel of property at Crowders Mountain State Park in Gaston County, Crowders Mountain Township, described in Deed Book 1240, Page 451, and containing 225 square feet and as shown in a survey by R&W Engineering and Surveying entitled 'Conveyance of 0.0052 acres owned by Crowders Mountain State Park, Gaston Co., NC' and dated January 18, 1995, is removed from the State Nature and Historic Preserve.

(b) The property described in subsection (a) of the section is deleted from the State Parks System pursuant to G.S. 113-44.14.

(c) The State may only exchange this property for other property for the expansion of Crowders Mountain State Park or sell this land and use the proceeds for that purpose. The State shall not otherwise sell or exchange this land."

Sec. 2. Pursuant to G.S. 113-44.14, the General Assembly authorizes the deletion of the following properties from the State Parks System:

(1) The 73-acre tract identified as a portion of the property legally described in the Department of the Army Lease for Recreation Development at the Townsville Landing Public Use Area at John H. Kerr Dam and Reservoir, Contract No. 54-75-C-0026, Lease No. DACW21-1-1815, Supplemental Agreement No. 2, as shown on Exhibits A-2 and B-1, Plate 7-18, to Supplemental Agreement No. 2 and further identified by name as Flemingtown Road Marina as shown in the Master Plan of John H. Kerr Dam and Reservoir, may be deleted from the lease.

Authorization for the removal from the Department of the Army lease of the portion of Kerr Lake State Recreation Area described under this section achieves the requirements and purposes of Article 2C of Chapter 113 of the General Statutes.

(2) The portion of that certain tract or parcel of property at Hanging Rock State Park in Stokes County, Danbury Township, described in Deed Book 360, Page 160, that is a 30-foot wide right-of-way beginning approximately 183 feet south of S.R. 1001 and extending in a southerly direction approximately 1,479 feet may be

deleted from the State Parks System. Said property is shown on a survey titled, "J. Spot Taylor Heirs, Danbury Township, Stokes County, N.C.," by Grinski Surveying Company, June 1985, as extending from the southwest corner of the James Robert Speir tract to the southwest corner of the Bobby Joe Lankford tract.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of May, 1995.

S.B. 542 **CHAPTER 132**

AN ACT TO PROVIDE FOR THE NONPARTISAN ELECTION OF THE CATAWBA COUNTY BOARD OF EDUCATION BY PLURALITY VOTE AT THE TIME OF THE COUNTY GENERAL ELECTION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 874 of the 1969 Session Laws, as amended by Chapter 170 of the Session Laws of 1985, reads as rewritten:

"Sec. 2. In the general election in 1986, there shall be elected four members of the Board of Education of Catawba County. In the general election in 1988, there shall be elected three members of the Board of Education of Catawba County. All members so elected shall hold their offices for four years, and until their successors are elected and qualified. ~~Thereafter,~~ Beginning in 1996, as vacancies occur in the membership of the Board of Education of Catawba County by reason of expiration of terms of office, they shall be filled by ~~nomination in the primaries and by~~ election in the general elections according to the number of vacancies to be filled and according to the procedure set forth in this Act."

Sec. 2. Section 3 of Chapter 874 of the 1969 Session Laws, as amended by Section 3 of Chapter 382 of the Session Laws of 1979, reads as rewritten:

"Sec. 3. All persons desiring to be candidates for membership on said Board of Education shall file notice of candidacy with the Board of Elections of Catawba County ~~no later than 12:00 noon on the First Monday in February before the primary election for the nomination of county officers to be held,~~ not earlier than noon on the first Monday in June and not later than noon on the first Friday in July in the year of the election, which notice shall state the name of each candidate, his age and place of residence, and which shall be accompanied by a filing fee of ten dollars ($10.00). ~~If the number of candidates filing for membership on said Board of Education shall not exceed twice the number of vacancies occurring by reason of expiration of terms of office then no primary election will be necessary, and the County Board of Elections shall certify such candidates as the nominees to be voted upon at the general election. If the number of candidates filing for membership on said Board of Education shall exceed twice the number of vacancies occurring by reason of expiration of terms of office, a separate ballot shall be provided by the County Board of elections and a primary election held with respect thereto at the same time fixed by law in primary elections for the nomination of candidates for county officers. In such~~

~~primary, the number of candidates, equal to twice the number of vacancies to be filled, receiving the highest number of votes in descending order shall be declared the nominees and the County Board of Elections shall certify such candidates as the nominees to be voted upon at the general election. Such primary elections for the selection of the nominees for the Board of Education shall be nonpartisan and no political party affiliation shall be used by any candidate, and no political party affiliation shall be shown on said primary ballot.~~"

Sec. 3. Section 4 of Chapter 874 of the 1969 Session Laws reads as rewritten:

"Sec. 4. ~~The general election shall be nonpartisan and there shall be a separate ballot provided by the County Board of Elections with the names of the nominees printed thereon with appropriate instructions for use in the general elections, and no political party affilliation shall be shown on said ballot and no political party affiliation shall be used by any candidate. At the general election the candidates equalling in number to the number of vacancies to be filled, receiving the highest number of votes in descending order shall be declared to be elected to membership on the Board of Education of Catawba County; and~~ Notwithstanding the provisions of G.S. 115C-37, the Catawba County Board of Education shall be elected on a nonpartisan basis at the time set by G.S. 163-1 for the general election in each even-numbered year as terms expire. The election shall be conducted on a nonpartisan plurality basis, with the results determined in accordance with G.S. 163-292. The names of the candidates shall be printed on the ballot without reference to any party affiliations. Except as provided by this act, the election shall be conducted in accordance with the applicable provisions of Chapters 115C and 163 of the General Statutes. Members of the Board of Education of Catawba County shall take office and qualify on the First Monday in December following their election."

Sec. 4. Section 5 of Chapter 874 of the Session Laws of 1969 reads as rewritten:

"Sec. 5. All candidates in any ~~primary and all nominees in any~~ general election held under this Act shall be qualified electors of Catawba County who reside outside the boundaries of the Hickory Administrative School Unit and the Newton-Conover Administrative School Unit, and shall be voted upon at large by the electors in Catawba County who reside outside the boundaries of the Hickory Administrative School Unit and the Newton-Conover Administrative School Unit."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of May, 1995.

H.B. 69 **CHAPTER 133**

AN ACT TO ALLOW THE TOWN OF BEECH MOUNTAIN TO MAKE STREET ASSESSMENTS WITHOUT FIRST RECEIVING A PETITION.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Beech Mountain, being Chapter 246 of the Session Laws of 1981, is amended by adding a new Article to read:

"ARTICLE X.
"ASSESSMENTS.

"Sec. 10.1. (a) The provisions of G.S. 160A-217 do not apply to the Town of Beech Mountain as to special assessments for street improvements.

(b) This section does not affect the applicability to the Town of Beech Mountain of other provisions of Article 10 of Chapter 160A of the General Statutes."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of May, 1995.

H.B. 133 **CHAPTER 134**

AN ACT TO ENABLE THE COUNTY OF COLUMBUS TO ESTABLISH AN AIRPORT AUTHORITY FOR THE MAINTENANCE OF AIRPORT FACILITIES IN THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. There is hereby created the "Columbus County Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly.

Sec. 2. The Airport Authority shall consist of five members who shall be appointed to staggered terms of four years by the Columbus County Board of Commissioners. All of the members shall be residents of Columbus County. Of the initial five members, two shall be appointed to a term of four years and three shall be appointed to a term of two years. Thereafter all terms shall be for four years. Each member shall take and subscribe before the Clerk of the Superior Court of Columbus County an oath of office and file the same with the Columbus County Board of Commissioners. Upon the occurrence of any vacancy on the Airport Authority, the vacancy shall be filled within 60 days after the vacancy occurs at a regular meeting of the Board of County Commissioners. Membership on the Columbus County Board of Commissioners and on the Airport Authority shall not constitute double office holding within the meaning of Article VI, §9 of the Constitution of North Carolina.

Sec. 3. The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority shall receive compensation, per diem, or otherwise as the Columbus County Board of Commissioners from time to time determines and be paid their actual traveling expenses incurred in transacting the business and at the instance of the Airport Authority.

Sec. 4. (a) The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the County and for this purpose to purchase, improve, own, hold, lease, or operate, real or personal property.

(2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise, any existing lease, leasehold right, or other interest in any existing airport located in the County.

(3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.

(4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina, and the regulations of the Federal Aviation Administration.

(5) To issue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.

(6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the Columbus County Board of Commissioners.

(7) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities. Columbus County shall not undertake any personal or property liability.

(8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.

(9) To purchase any of its outstanding bonds or notes.

(10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed 25 years, the right to operate on any airport premises restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barber shops, automobile parking and storage facilities, automobile service stations, garage service facilities, motion pictures, personal service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation.

(11) To contract with persons, firms, or corporations for terms not to exceed 25 years, for the operation of airline-scheduled passenger

and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.

(12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 25 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.

(13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.

(14) To have a corporate seal, which may be altered at will.

(b) The Airport Authority shall possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

Sec. 5. The Airport Authority may acquire from the County, by agreement with the County, and the County may grant and convey, either by gift or for such consideration as the County may deem wise, any real or personal property which it now owns or may hereafter acquire, including nontax monies, and which may be necessary for the construction, operation, and maintenance of any airport located in the County.

Sec. 6. Any lands acquired, owned, controlled, or occupied by the Airport Authority shall be, and are declared to be acquired, owned, controlled, and occupied for a public purpose.

Sec. 7. Private property needed by the Airport Authority for any airport, landing field, or as facilities of an airport or landing field may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of eminent domain pursuant to Chapter 40A of the General Statutes.

Sec. 8. The Airport Authority shall make an annual report to the Columbus County Board of Commissioners setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Columbus County, or any subdivision thereof, or to impose any obligation on Columbus County, or any of its subdivisions, except when that power is expressly granted by statute.

Sec. 9. Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law, which may now be in effect or enacted in the future relating to the development, regulation, and control of municipal airports, and the regulation of aircraft, are vested in the Airport Authority. The Columbus County Board of Commissioners may delegate its powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights

with Columbus County to control, regulate, and provide for the development of aviation in Columbus County.

Sec. 10. The Airport Authority may contract with and accept grants from the Federal Aviation Administration, the State of North Carolina, or any of the agencies or representatives of either of said governmental bodies relating to the purchase of land and air easements and to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities or both.

Sec. 11. The Airport Authority may employ any agents, engineers, attorneys, and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of Sections 1 through 10 of this act.

Sec. 12. The Columbus County Board of Commissioners may appropriate funds derived from any source other than ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Columbus County Board of Commissioners.

Sec. 13. The Airport Authority may expend the funds that are appropriated by the County for joint airport purposes and may pledge the credit of the Airport Authority to the extent of the appropriated funds.

Sec. 14. The Airport Authority shall elect from among its members a chair, a secretary, and a treasurer at its initial meeting and then annually thereafter. A majority of the Airport Authority shall control its decisions. Each member of the Airport Authority, including the chair, shall have one vote. The Airport Authority shall meet at the places and times designated by the chair.

Sec. 15. The powers granted to the Airport Authority shall not be effective until the members of the Airport Authority have been appointed by the Columbus County Board of Commissioners, and nothing in this act shall require the Board of Commissioners to make the initial appointments. It is the intent of this act to enable but not to require the formation of the Columbus County Airport Authority.

Sec. 16. If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Sec. 17. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of May, 1995.

H.B. 136 **CHAPTER 135**

AN ACT TO MAKE PERMANENT THE EXEMPTION FOR REAL ESTATE ACQUIRED BY THE DEPARTMENT OF TRANSPORTATION FROM THE REQUIREMENT THAT IT BE APPRAISED BY A LICENSED OR CERTIFIED APPRAISER WHEN

THE ESTIMATED VALUE OF THE REAL ESTATE IS LESS THAN TEN THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 94 of the 1991 Session Laws, as amended by Section 1 of Chapter 519 of the 1993 Session Laws and by Section 1 of Chapter 691 of the 1993 Session Laws (Reg. Sess. 1994), reads as rewritten:

"Sec. 2. This act is effective upon ~~ratification and expires July 1, 1995.~~ ratification."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of May, 1995.

H.B. 301 **CHAPTER 136**

AN ACT TO PROVIDE FOR THE AWARD OF STATE REQUIREMENTS CONTRACTS FOR FURNITURE.

The General Assembly of North Carolina enacts:

Section 1. To ensure agencies access to sufficient sources of furniture supply and service, to provide agencies the necessary flexibility to obtain furniture that is compatible with interior architectural design and needs, to provide small and disadvantaged businesses additional opportunities to participate on State requirements contracts, and to restore the traditional use of multiple award contracts for purchasing furniture requirements, each State furniture requirements contract shall be awarded on a multiple award basis, subject to the following conditions:

(1) Competitive, sealed bids must be solicited for the contract in accordance with Article 3 of Chapter 143 of the General Statutes unless otherwise provided for by the State Purchasing Officer pursuant to that Article.

(2) Subject to the provisions of this section, bids shall be evaluated and the contract awarded in accordance with Article 3 of Chapter 143 of the General Statutes.

(3) For each category of goods under each State requirements furniture contract, awards shall be made to at least three qualified vendors unless the State Purchasing Officer determines that three qualified vendors are not available or that it is in the best interest of the State to make fewer awards. The State Purchasing Officer, subject to the approval of the Board of Award, shall state his reasons in writing for making fewer awards and the written documentation shall be maintained as part of the bid file and subject to public inspection.

(4) Each agency purchasing under the contract shall make the most economical purchase that meets its needs.

Sec. 2. Each agency shall report to the Department of Administration, in the manner prescribed by the State Purchasing Officer, its purchases from each multiple award furniture requirements contract. The Department

shall compile the information for review by the Secretary. The Secretary shall submit a report to the General Assembly, no later than July 1, 1997, on the use of multiple award contracts for furniture.

Sec. 3. For purposes of this section, "furniture requirements contract" means State requirements contracts for casegoods, classroom furniture, bookcases, ergonomic chairs, office swivel and side chairs, computer furniture, mobile and folding furniture, upholstered seating, commercial dining tables, and related items.

Sec. 4. This act is effective upon ratification and applies to contracts for which bids or offers are solicited on or after that date.

In the General Assembly read three times and ratified this the 31st day of May, 1995.

H.B. 400 **CHAPTER 137**

AN ACT TO AUTHORIZE THE STATE BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS TO SEEK INJUNCTIVE RELIEF.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93-12 is amended by adding a new subdivision to read:

"(16) To apply to the courts, in its own name, for injunctive relief to prevent violations of this Chapter or violations of any rules adopted pursuant to this Chapter. Any court may grant injunctive relief regardless of whether criminal prosecution or any other action is instituted as a result of the violation. A single violation is sufficient to invoke the injunctive relief under this subdivision."

Sec. 2. This act becomes effective October 1, 1995, and applies to any violation committed on or after that date.

In the General Assembly read three times and ratified this the 31st day of May, 1995.

H.B. 464 **CHAPTER 138**

AN ACT TO REMOVE FROM THE CORPORATE LIMITS OF THE TOWN OF HOPE MILLS A DESCRIBED TERRITORY.

The General Assembly of North Carolina enacts:

Section 1. The following described property is removed from the corporate limits of the Town of Hope Mills:

BEGINNING at an iron pipe on the western margin of a sand clay road. Also being the southeast corner of Lot 67 of Village Green Subdivision, Section One, as recorded in Plat Book 45, Page 37 Cumberland County Registry and running thence with said road South 30 degrees 00 minutes West 208.81 feet to an iron pipe; thence North 85 degrees 39 minutes 22 seconds West 207.73 feet to an iron pipe; thence, North 28 degrees 59 minutes 42 seconds East 213.13 feet to an iron pipe in the southern line of

said Village Green Subdivision, Section Two, and running thence with said line South 84 degrees 09 minutes 14 seconds East 209.32 feet to the beginning and containing 0.92 acres and being the property described in a deed recorded in Book 2284, Page 585 of the Cumberland County, North Carolina, Registry.

Sec. 2. This act has no effect upon the validity of any liens of the Town of Hope Mills for ad valorem taxes or special assessments outstanding for years before 1995.

Sec. 3. This act becomes effective June 30, 1995.

In the General Assembly read three times and ratified this the 31st day of May, 1995.

H.B. 680 **CHAPTER 139**

AN ACT TO INCORPORATE THE TOWN OF MULBERRY-FAIRPLAINS.

Section 1. A Charter for the Town of Mulberry-Fairplains is enacted to read:

"CHARTER OF THE TOWN OF MULBERRY-FAIRPLAINS.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. *Incorporation and Corporate Powers.* The inhabitants of the Town of Mulberry-Fairplains are a body corporate and politic under the name 'Town of Mulberry-Fairplains'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"Sec. 1.2. *Map.* An official map of the Town, showing the current boundaries, is maintained permanently in the office of the Town Clerk and is available for public inspection. A true copy of such shall be filed in the office of the Wilkes County Register of Deeds.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. *Town Boundaries.* Until modified in accordance with law, the boundaries of the Town of Mulberry-Fairplains are as follows:

From the intersection of Highway #18 North at Mulberry Church Road to the intersection of SR #1703 and SR #1723; then on the Northwest side of the fire district line, established February 6, 1963, on SR #1544 and SR #1545 to the end of Kilby Branch Road; then on the Northwest side of SR #1546 to Robert Grimes property, including the original boundary for the Mulberry-Fairplains Fire District beginning at a point on Highway 18, 2/10 mile east of its intersection with Mertie Road; then northwest to a point on the Mertie Road 2/10 mile northwest of its intersection with Highway 18, then southeasterly to a point at the end of Road # 1542; then southeasterly to a point on Road #1541 at the bridge on North Fork of Reddies River.

Then southeasterly to a point on Road # 1540, 6/10 mile northwest of bridge on North Fork of Reddies River; then southeasterly to a point at the Fork of Reddies River. Then following Reddies River southeasterly to a point approximately 6/10 mile northwest of Suncrest Road. Then southeast

to a point on Suncrest Road 2/10 mile southwest of its intersection with Hackett (formerly, Gordon) Street.

Then southeast, following the city limits of North Wilkesboro along Waugh Street to a point where the city limits of North Wilkesboro follow the route of Hwy. 18 North. Then following the city limits of North Wilkesboro northwesterly to a point 1/10 mile northwest of the intersection of Hwy. 18 and Mountain View Road, then to a point 1/10 mile northeasterly of the intersection of Hwy. 18 and Mountain View Road crossing Mountain View Road and following the city limits of the town of North Wilkesboro southeasterly to Northview Plaza, then following the city limits east, northeasterly past Pine Street, south toward Hwy. 268 along the city limits of North Wilkesboro, then east/northeasterly following the city limits of North Wilkesboro to the point where the city limits of North Wilkesboro stop prior to the intersection of Hwy. 268 and Aaron Call Road, then southeast crossing Hwy. 268 at a point where the city limits of North Wilkesboro proceed westwardly, following the city limits of North Wilkesboro to a point 1.7 miles southwest on Flint Hill Road to a point where the city limits turn south, then following the city limits of North Wilkesboro south/southeasterly along the line of the city limits of North Wilkesboro to Mulberry River.

Then north along Mulberry River to a point on Highway 268 at the Mulberry River bridge. Then following the Mulberry River northwesterly to a point on Road #1002, at the Mulberry River bridge. Then northwesterly to a point on Road # 1706, at Haymeadow Creek bridge. Then northerly to a point on Road #1703, 1.2 miles north of the Mulberry River bridge excluding property on Road #1706 north of the preceding point.

Then northwesterly to a point on Road #1717, 4/10 mile northeast of its intersection with Road #1722. Then west to a point on Road #1722, 4/10 mile west of its intersection with Road #1717. Then northwesterly to the beginning point on Highway 18, excluding property on Road #1722 north of the preceding point.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. *Structure of Governing Body; Number of Members.* The governing body of the Town of Mulberry-Fairplains is the Board of Aldermen, which has five members, and the Mayor.

"Sec. 3.2. *Manner of Electing Board of Aldermen.* The qualified voters of the entire Town elect the members of the Board of Aldermen.

"Sec. 3.3. *Term of Office of Board of Aldermen.* Members of the Board of Aldermen are elected to four-year terms, except that of those elected at the initial election in 1995, the three highest vote getters who are elected shall serve for four-year terms and the next two highest vote getters shall serve for two-year terms. In 1997 and quadrennially thereafter, two members of the Board of Aldermen shall be elected for four-year terms. In 1999 and quadrennially thereafter, three members of the Board of Aldermen shall be elected for four-year terms.

"Sec. 3.4. *Election of Mayor; Term of Office.* The Mayor shall be elected by the qualified voters of the Town in 1995 and quadrennially thereafter for a four-year term.

"CHAPTER IV.
"ELECTIONS.

"Sec. 4.1. *Conduct of Town Elections.* Town elections shall be conducted on a nonpartisan basis, and the results determined by plurality as provided in G.S. 163-292. Elections shall be conducted by the Wilkes County Board of Elections.

"CHAPTER V.
"ADMINISTRATION.

"Sec. 5.1. The Town of Mulberry-Fairplains shall operate under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Sec. 2. Until the organizational meeting of the Board of Aldermen following the 1995 municipal election, Jack D. Badgett, Herbert Church, Bryce Sebastian, James Turner, and Phillip Wilson shall serve as members of the Board of Aldermen, and Nada Cleary Lawrimore shall serve as Mayor. In the event of a vacancy on the Board of Aldermen, the Board of Aldermen shall appoint a qualified person to fill such vacancy until the organizational meeting. The initial meeting of the Board of Aldermen shall be called by the Mayor.

Sec. 3. (a) From and after the effective date of this act, the citizens and property in the Town of Mulberry-Fairplains shall be subject to municipal taxes levied for the year beginning July 1, 1995, and for that purpose the Town shall obtain from Wilkes County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1995; and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance.

(b) The Town may adopt a budget ordinance for fiscal year 1995-96 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1995-96, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1995.

Sec. 4. At a date no earlier than 60 days after ratification of this act and no later than September 1, 1995, established by the Board of Commissioners of Wilkes County, the Wilkes County Board of Elections shall conduct a special election for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Mulberry-Fairplains, the question of whether or not such area shall be incorporated as the Town of Mulberry-Fairplains. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

Sec. 5. In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST
Incorporation of the Town of Mulberry-Fairplains".

Sec. 6. In the election, if a majority of the votes are cast "For Incorporation of the Town of Mulberry-Fairplains", Sections 1 through 3 of

this act become effective on the date that the Wilkes County Board of Elections certifies the results of the election. Otherwise, those sections shall have no force and effect.

Sec. 7. If a majority of the voters approve the incorporation of Mulberry-Fairplains, the election of the Board of Aldermen and Mayor shall take place at an election held on November 7, 1995. The Wilkes County Board of Elections shall establish a special candidate filing period in lieu of that provided by Chapter 163 of the General Statutes.

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of May, 1995.

S.B. 312 **CHAPTER 140**

AN ACT TO ALLOW AN INSANITY HEARING FOR A DEFENDANT FOUND NOT GUILTY BY REASON OF INSANITY TO BE HELD IN THE SAME COUNTY AS THE RESPONDENT'S TRIAL WAS HELD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-268.1(b) reads as rewritten:

"(b) The district attorney in the county in which the respondent was found not guilty by reason of insanity may represent the State's interest at the hearing, rehearings, and supplemental rehearings. Notwithstanding the provisions of G.S. 122C-269, if the district attorney elects to represent the State's interest, upon motion of the district attorney, the venue for the hearing, rehearings, and supplemental rehearings shall be the county in which the respondent was found not guilty by reason of insanity. If the district attorney declines to represent the State's interest, then the representation shall be determined as follows. An attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill, may represent the State's interest at commitment hearings, rehearings, and supplemental hearings. Alternatively, the Attorney General may, in his discretion, designate an attorney who is a member of his staff to represent the State's interest at any commitment hearing, rehearing, or supplemental hearing."

Sec. 2. The catch line of G.S. 122C-269 reads as rewritten:

"*§ 122C-269. Venue of ~~district court~~ hearing when respondent held at a 24-hour facility pending hearing.*"

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

S.B. 405 **CHAPTER 141**

AN ACT TO AMEND THE STATE PERSONNEL ACT RELATING TO THE DEFINITION OF CAREER STATE EMPLOYEE, THE GROUNDS FOR STATE EMPLOYEE APPEALS, THE INVESTIGATORY DUTIES OF THE OFFICE OF STATE

PERSONNEL, AND THE PRIORITY CONSIDERATION OF STATE EMPLOYEES IN FILLING VACANCIES; TO PROVIDE FOR THE ADOPTION OF AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE BY THE STATE PERSONNEL COMMISSION; AND TO ALLOW ALTERNATIVE OBSERVANCE OF THE NEW YEAR'S HOLIDAY.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"*§ 126-1.1. Career State employee defined.*

For the purposes of this Chapter, unless the context clearly indicates otherwise, 'career State employee' means a State employee who:

(1) Is in a permanent position appointment; and

(2) Has been continuously employed by the State of North Carolina in a position subject to the State Personnel Act for the immediate 24 preceding months."

Sec. 2. G.S. 126-1A is repealed.

Sec. 3. G.S. 126-5(c) reads as rewritten:

"(c) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), and 126-7, and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) A State employee ~~who:~~ who is not a career State employee as defined by this Chapter.

~~a. Is in a primary level position and has not been continuously employed by the State of North Carolina for the immediate 12 preceding months;~~

~~b. Is in a secondary level or professional position and has not been continuously employed by the State of North Carolina for the immediate 24 preceding months; or~~

~~c. Is in a management level or consultant position and has not been continuously employed by the State of North Carolina for the immediate 36 preceding months.~~

d. Repealed by Session Laws 1991, c. 354, s. 3.

(2) One confidential assistant and two confidential secretaries for each elected or appointed department head and one confidential secretary for each chief deputy or chief administrative assistant.

(3) Employees in policymaking positions designated as exempt pursuant to G.S. 126-5(d).

(4) The chief deputy or chief administrative assistant to the head of each State department who is designated either by statute or by the department head to act for and perform all of the duties of such department head during his absence or incapacity."

Sec. 4. G.S. 126-4 reads as rewritten:

"*§ 126-4. Powers and duties of State Personnel Commission.*

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

(1) Position classification plans which shall provide for the classification and reclassification of all positions subject to this Chapter according to the duties and responsibilities of the positions.

(2) Compensation plans which shall provide for minimum, maximum, and intermediate rates of pay for all employees subject to the provisions of this Chapter.

(3) For each class of positions, reasonable qualifications as to education, experience, specialized training, licenses, certifications, and other job-related requirements pertinent to the work to be performed.

(4) Recruitment programs designed to promote public employment, communicate current hiring activities within State government, and attract a sufficient flow of internal and external applicants; and determine the relative fitness of applicants for the respective positions.

(5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment. The legal public holidays established by the Commission as paid holidays for State employees shall include Martin Luther King, Jr.'s Birthday and Veterans Day. The Commission shall not provide for more than 11 paid holidays per year except that in those years in which Christmas Day falls on a Tuesday, Wednesday, or Thursday, the Commission shall not provide for more than 12 paid holidays.

(5a) In years in which New Year's Day falls on Saturday, the Commission may designate December 31 of the previous calendar year as the New Year's holiday, provided that the number of holidays for the previous calendar year does not exceed 12 and the number of holidays for the current year does not exceed 10. When New Year's Day falls on either Saturday or Sunday, the constituent institutions of The University of North Carolina that adopt alternative dates to recognize the legal public holidays set forth in subdivision (5) of this section and established by the Commission may designate, in accordance with the rules of the Commission and the requirements of this subdivision, December 31 of the previous calendar year as the New Year's holiday.

(6) The appointment, promotion, transfer, demotion and suspension of employees.

(7) Cooperation with the State Board of Education, the Department of Public Instruction, the University of North Carolina, and the Community Colleges of the State and other appropriate resources in developing programs in, including but not limited to, management and supervisory skills, performance evaluation, specialized employee skills, accident prevention, equal employment opportunity awareness, and customer service; and to maintain an accredited Certified Public Manager program.

(7a) The separation of employees.

(8) A program of meritorious service awards.

(9) The investigation of complaints and the issuing of such binding corrective orders or such other appropriate action concerning employment, promotion, demotion, transfer, discharge, reinstatement, and any other issue defined as a contested case issue by this Chapter in all cases as the Commission shall find justified.

(10) Programs of employee assistance, productivity incentives, equal opportunity, safety and health as required by Part 1 of Article 63 of Chapter 143 of the General Statutes, and such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration. This subdivision may not be construed to authorize the establishment of an incentive pay program.

(11) In cases where the Commission finds discrimination or orders reinstatement or back pay whether (i) heard by the Commission or (ii) appealed for limited review after settlement or (iii) resolved at the agency level, the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved.

(12) Repealed by Session Laws 1987, c. 320, s. 2.

(13) Repealed by Session Laws 1987, c. 320, s. 3.

(14) The implementation of G.S. 126-5(e).

(15) Recognition of State employees, public personnel management, and management excellence.

(16) The implementation of G.S. 126-7.

(17) An alternative dispute resolution procedure.

~~Such~~ The policies and rules of the Commission shall not limit the power of any elected or appointed department head, in ~~his~~ the department head's discretion and upon ~~his~~ the department head's determination that it is in the best interest of the Department, to transfer, demote, or separate a State employee who is not a career State employee as defined by this Chapter.

~~(1) Employee in a primary level position who has not been continuously employed by the State of North Carolina for the immediate 12 preceding months;~~

~~(2) Employee in a secondary level or professional position who has not been continuously employed by the State of North Carolina for the immediate 24 preceding months; [or]~~

~~(3) Employee in a management level or consultant position who has not been continuously employed by the State of North Carolina for the immediate 36 preceding months.~~

(4) Repealed by Session Laws 1991, c. 354, s. 2, effective July 1, 1993."

Sec. 5. G.S. 126-5(h) reads as rewritten:

"(h) In case of dispute as to whether an employee is subject to the provisions of this Chapter, ~~the question shall be investigated by the State Personnel Office, and~~ the dispute shall be resolved as provided in Article 3 of Chapter 150B."

Sec. 6. G.S. 126-7(c)(7) reads as rewritten:

"(7) An employee who disputes the fairness of his or her performance appraisal or the amount of ~~the~~ a performance bonus awarded or

who believes that he or she was unfairly denied a career growth recognition award or performance bonus shall first discuss the problem with his or her supervisor. Appeals of the supervisor's decision shall be made only to the grievance committee or internal performance review board of the department, agency, or institution which shall make a recommendation to the head of the department, agency, or institution for final ~~decision.~~ decision, or when consented to by both the agency and the employee, the supervisor's decision may be appealed by following the alternative dispute resolution process adopted by the State Personnel Commission. The State Personnel Director shall help a department, agency, or institution establish an internal performance review board or, if it includes employee members, to use its existing grievance committee to hear performance pay disputes. Notwithstanding G.S. 150B-2(2) and G.S. 126-22, 126-25, and 126-34, performance pay disputes, including disputes about individual performance appraisals, shall not be considered contested case issues."

Sec. 7. Article 8 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"*§ 126-34.1. Grounds for contested case under the State Personnel Act defined.*

(a) A State employee or former State employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes only as to the following personnel actions or issues:

(1) Dismissal, demotion, or suspension without pay based upon an alleged violation of G.S. 126-35, if the employee is a career State employee.

(2) An alleged unlawful State employment practice constituting discrimination, as proscribed by G.S. 126-36, including:

a. Denial of promotion, transfer, or training, on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes.

b. Demotion, reduction in force, or termination of an employee in retaliation for the employee's opposition to alleged discrimination on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes.

(3) Retaliation against an employee, as proscribed by G.S 126-17, for protesting an alleged violation of G.S. 126-16.

(4) Denial of the veteran's preference granted in accordance with Article 13 of this Chapter in initial State employment or in connection with a reduction in force, for an eligible veteran as defined by G.S. 126-81.

(5) Denial of promotion for failure to post or failure to give priority consideration for promotion or reemployment, to a career State employee as required by G.S. 126-7.1 and G.S. 126-36.2.

(6) Denial of an employee's request for removal of allegedly inaccurate or misleading information from the employee's personnel file as provided by G.S. 126-25.

(b) An applicant for initial State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon:

(1) Alleged denial of employment in violation of G.S. 126-16.

(2) Denial of the applicant's request for removal of allegedly inaccurate or misleading information from the employee's personnel file as provided by G.S. 126-25.

(3) Denial of equal opportunity for employment and compensation on account of the employee's age, sex, race, color, national origin, religion, creed, or handicapping condition as defined by Chapter 168A of the General Statutes. This subsection with respect to equal opportunity as to age shall be limited to persons who are at least 40 years of age.

(4) Denial of the veteran's preference in initial State employment provided by Article 13 of this Chapter, for an eligible veteran as defined by G.S. 126-81.

(c) In the case of a dispute as to whether a State employee's position is properly exempted from the State Personnel Act under G.S. 126-5, the employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes.

(d) A State employee or applicant for State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon a false accusation regarding, or disciplinary action relating to, the employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

(e) Any issue for which appeal to the State Personnel Commission through the filing of a contested case under Article 3 of Chapter 150B of the General Statutes has not been specifically authorized by this section shall not be grounds for a contested case under Chapter 126."

Sec. 8. Article 8 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"*§ 126-34.2. Alternative dispute resolution.*

(a) Notwithstanding the provisions of Articles 6 and 7 of this Chapter, or the other provisions of this Article, with the consent of the parties, a matter for which a State employee, a former State employee, or an applicant for State employment has filed a contested case under Article 3 of Chapter 150B of the General Statutes may be handled in accordance with alternative dispute resolution procedures adopted by the State Personnel Commission.

(b) In its discretion, the State Personnel Commission may adopt alternative dispute resolution procedures for the resolution of matters not constituting grounds for a contested case under G.S. 126-34.1.

(c) Nothing in this section shall be construed to limit the right of any person to file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes."

Sec. 9. G.S. 126-7.1(c) reads as rewritten:

"(c) If a State employee subject to this section:

(1) Applies for another position of State ~~employment; and~~ employment that would constitute a promotion; and

(2) Has substantially equal qualifications as an applicant who is not a State employee

then the State employee shall receive priority consideration over the applicant who is not a State employee. This priority consideration shall not apply when the only applicants considered for the vacancy are current State employees."

Sec. 10. Article 2 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"*§ 126-7.2. Time limit for appeals of applicants and noncareer State employees.*

Any applicant or employee that has not attained career status, appealing any decision or action shall file a petition for contested case hearing with the Office of Administrative Hearings as provided in G.S. 150B-23(a) no later than 30 days after receipt of notice of the decision or action which triggers the right of appeal."

Sec. 11. This act is effective upon ratification, except that Sections 1 and 2 become effective July 1, 1996, and Section 1 applies to all State employees employed on or after that date who have not attained career State employee status prior to that date.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

S.B. 413 **CHAPTER 142**

AN ACT TO AUTHORIZE THE CONVERSION OF SAVINGS ASSOCIATIONS AND SAVINGS BANKS INTO COMMERCIAL BANKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-17.2 reads as rewritten:

"*§ 53-17.2. Conversion of savings association to a State bank.*

(a) Any association, as defined in G.S. 54B-4, or any savings bank as defined in G.S. 54C-4(b), may convert to a State bank as provided in this section. ~~A mutual association must first convert to a stock association before applying for conversion to a bank as provided in this section.~~ As used in this section, the term 'conversion' includes (i) a transaction in which a State bank assumes all or substantially all of the liabilities and purchases all or substantially all of the assets of an association or savings bank and (ii) any other transaction that results in a change of identity of an association or savings bank to a State bank. A transaction in which the resulting bank is a subsidiary or an affiliate of a bank holding company or bank which has been in existence for at least two years shall not be subject to the provisions of this section but shall be subject to the approval of the Commissioner of Banks.

(b) ~~Any association, upon~~ Upon a majority vote of its board of directors, any association or savings bank may apply to the Commissioner of Banks for permission to convert to a bank and for certification of appropriate

amendments to ~~the association's~~ its certificate of incorporation to effect the conversion. A mutual association or savings bank must also convert to a stock form of organization before completing conversion to a bank.

(c) The association or savings bank shall submit a plan of conversion as a part of the application to the Commissioner of Banks. The Commissioner of Banks may recommend approval of the plan of conversion with or without amendment. The Commissioner of Banks shall recommend approval of the plan of conversion if upon examination and investigation ~~he~~ the Commissioner finds that:

(1) The resulting bank will operate in a safe, sound, and prudent manner with adequate capital, liquidity, and earnings prospects;

(2) The directors, officers, and other managerial officials of the association or savings bank are qualified by character and financial responsibility to control and operate in a legal and proper manner the bank proposed to be formed as a result of the conversion;

(3) The interest of the depositors, the creditors, and the public generally will not be jeopardized by the proposed conversion; and

(4) The proposed name will not mislead the public as to the character or purpose of the resulting bank, and the proposed name is not the same as one already adopted or appropriated by an existing bank in this State or so similar as to be likely to mislead the public.

(d) Any action taken by the Commissioner of Banks pursuant to this section shall be subject to review by the State Banking Commission which may approve, modify, or disapprove any action taken or recommended by the Commissioner of Banks. The State Banking Commission may promulgate rules to govern conversions undertaken pursuant to this section. The requirements for a converting association or savings bank shall be no more stringent than those provided by rule or regulation applicable to other FDIC-insured commercial banks. The requirements for a converting association or savings bank shall be no less stringent than those provided by rule or regulation applicable to other FDIC-insured commercial banks, except as may be allowed during transition periods permitted by subdivisions (e)(4) and (h)(2) of this section.

(e) In the absence of the promulgation of rules under subsection (d), the conditions to be met for approval of the application for conversion should include the following:

(1) Condition. The applicant's general condition must reflect adequate capital, liquidity, reserves, earnings, and asset composition necessary for safe and sound operation of the resulting bank.

(2) Management. The management and the board of directors must be capable of supervising a sound banking operation and overseeing the changes that must be accomplished in the conversion from an association or savings bank to a bank.

(3) Public Convenience. The Commission must determine that the conversion will have a positive impact on the convenience of the public and will not substantially reduce the services available to the public in the market area.

(4) Transition. Within a reasonable time after the effective date of the conversion, the resulting bank must divest itself of all assets and

liabilities that do not conform to State banking law or rules. The length of this transition period shall be determined by the Commissioner and shall be specified when the application for conversion is approved.

In evaluating each of these conditions, the Commission shall consider a comparison of the relevant financial ratios of the applicant with the average ratios of North Carolina banks of similar asset size. The Commission may not approve a conversion where the applicant presents an undue supervisory concern or has not been operated in a safe and sound manner.

(f) If the State Banking Commission approves the plan of conversion, then the association or savings bank shall submit the plan to the stockholders or members as provided in subsection (g). After approval of the plan of conversion, the Commissioner of Banks shall supervise and monitor the conversion process and shall ensure that the conversion is conducted pursuant to law and the association's or savings bank's approved plan of conversion.

(g) After lawful notice to the stockholders or members of the association or savings bank and full and fair disclosure of the plan of conversion, the plan must be approved by a majority of the total votes that stockholders or members of the association or savings bank are eligible and entitled to cast. The vote by the stockholders or members may be in person or by ~~proxy.~~ a proxy which has been executed within 45 days prior to the vote. Following the vote of the ~~stockholders,~~ stockholders or members, the association or savings bank shall file with the Commissioner of Banks the results of the vote certified by an appropriate ~~officer of the association,~~ officer. The Commissioner of Banks shall then approve the requested conversion and the association or savings bank shall file with the Secretary of State amended articles of incorporation with the certificate of the Commissioner of Banks attached. The conversion ~~of the association~~ to a bank shall be effective upon this filing.

(h) The Commissioner of Banks may authorize the resulting bank to do the following:

(1) Wind up any activities legally engaged in by the association or savings bank at the time of conversion but not permitted to State banks.

(2) Retain for a transitional period any assets and deposit liabilities legally held by the association or savings bank at the effective date of the conversion that may not be held by State banks.

The length, terms, and conditions of the transitional periods under subdivisions (1) and (2) are subject to the discretion of the Commissioner of Banks.

(i) Upon conversion of an association or savings bank to a bank, the legal existence of ~~the association~~ such institution does not terminate, and the resulting bank is a continuation of the ~~association.~~ former institution. The conversion shall be a mere change in identity or form of organization. All rights, liabilities, obligations, interest, and relations of whatever kind of the association or savings bank shall continue and remain in the resulting bank. Except as may be authorized during a transitional period by the Commissioner of Banks pursuant to subsection (h), a bank resulting from

the conversion of an association or savings bank shall have only those rights, powers and duties which are authorized for banks by the laws of this State and the United States. All actions and legal proceedings to which the association or savings bank was a party prior to conversion shall be unaffected by the conversion and shall proceed as if the conversion had not taken place."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

S.B. 556 **CHAPTER 143**

AN ACT TO SPECIFY HOW THE PROCEEDS OF THE BURKE OCCUPANCY TAX SHALL BE DIVIDED BETWEEN THE TWO PURPOSES FOR WHICH THEY MAY BE USED.

The General Assembly of North Carolina enacts:

Section 1. Section 1(e) of Chapter 422 of the 1989 Session Laws reads as rewritten:

"(e) Use of tax revenue. Burke County shall use the net proceeds of the occupancy tax only to promote economic development and travel and tourism in Burke County. The county shall allocate the net proceeds one-half for economic development and one-half for travel and tourism. As used in this subsection, 'net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer."

Sec. 2. Effective July 1, 1996, Section 1(e) of Chapter 422 of the 1989 Session Laws, as amended by this act, reads as rewritten:

"(e) Use of tax revenue. Burke County shall use the net proceeds of the occupancy tax only to promote economic development and travel and tourism in Burke County. The county ~~shall~~ may allocate the net proceeds one-half for economic development and one-half for travel and ~~tourism.~~ tourism or in any other ratio the board of commissioners considers appropriate. As used in this subsection, 'net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer."

Sec. 3. Section 2 of this act becomes effective July 1, 1996. The remainder of this act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

S.B. 582 **CHAPTER 144**

AN ACT TO PERMIT THE CITIES OF CHARLOTTE, WILMINGTON AND WINSTON-SALEM; THE TOWNS OF ATLANTIC BEACH AND CHAPEL HILL; AND NEW HANOVER COUNTY TO REGULATE BY ORDINANCE THE POSSESSION OF MALT BEVERAGES AND UNFORTIFIED WINE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-300(c) reads as rewritten:

"(c) Local Ordinance. -- A city or county may by ~~ordinance regulate~~ ordinance:

(1) Regulate or prohibit the consumption of malt beverages and unfortified wine on the public streets in that city or county and on property owned or occupied by that city or ~~county.~~ county;

(2) Regulate or prohibit the possession of open containers of malt beverages and unfortified wine by pedestrians on public streets in that city or county and on property owned or occupied by that city or county; and

(3) Regulate or prohibit the possession of malt beverages and unfortified wine on public streets, alleys, or parking lots which are temporarily closed to regular traffic for special events."

Sec. 2. This act applies only to the Cities of Charlotte, Wilmington and Winston-Salem; the Towns of Atlantic Beach and Chapel Hill; and New Hanover County.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

S.B. 772 **CHAPTER 145**

AN ACT TO REMOVE THE SUNSET FROM THE OFFICE OF ADMINISTRATIVE HEARINGS MEDIATION PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 363 of the 1993 Session Laws reads as rewritten:

"Sec. 3. This act becomes effective October 1, 1993 only if the General Assembly appropriates funds to implement the purpose of this ~~act, and expires June 30, 1995.~~ act. It applies to contested cases pending on or commenced after the effective date."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

S.B. 884 **CHAPTER 146**

AN ACT TO ALLOW THE PREPARATION OF FIRE SPRINKLER PLANNING AND DESIGN DRAWINGS BY A LICENSED FIRE SPRINKLER CONTRACTOR UNDER THE ENGINEERING AND LAND SURVEYING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-25(8) reads as rewritten:

"(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of

internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of such corporations provided that such work is in connection with, or incidental to products of, or nonengineering services rendered by such corporations or their affiliates."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

H.B. 82 **CHAPTER 147**

AN ACT TO ALLOW MEMBERS OF THE GENERAL ASSEMBLY AND CHAIRS OF COUNTY BOARDS OF COMMISSIONERS TO ADMINISTER OATHS OF OFFICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 11-7.1 reads as rewritten:

"*§ 11-7.1. Who may administer oaths of office.*

(a) Except as otherwise specifically required by statute, an oath of office may be administered by:

(1) A justice, judge, magistrate, clerk, assistant clerk, or deputy clerk of the General Court of Justice, a retired justice or judge of the General Court of Justice, or any member of the federal judiciary;
(2) The Secretary of State;
(3) A notary public;
(4) A register of deeds;
(5) A mayor of any city, town, or incorporated village;
(5a) A chairman of the board of commissioners of any county;
(6) ~~The chairman of a committee~~ A member of the House of Representatives or Senate of the General ~~Assembly, or either of the cochairmen of a joint committee;~~ Assembly;
(7) The clerk of any county, city, town or incorporated village."

Sec. 2. This act becomes effective with respect to oaths of office administered on or after December 1, 1995.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

H.B. 312 **CHAPTER 148**

AN ACT TO PERMIT CHIMNEY ROCK VILLAGE TO HOLD CERTAIN ABC ELECTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-600 is amended by adding a new subsection to read:

"(e5) Small Resort Town ABC Elections. -- A town may hold a mixed beverage election if it:

(1) Was incorporated after 1990 and prior to the effective date of this subsection;
(2) Has at least 100 residents;
(3) Is located in a county that borders another state and that has two other municipalities which have ABC stores; and
(4) At the time of the election, has corporate boundaries that border or include land in three counties.

Provided, that if a town that qualifies for an election under this subsection approves the sale of mixed beverages, mixed beverages permittees in the town may purchase liquor from the ABC store designated by any local ABC board in any other city that has approved the sale of mixed beverages."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

H.B. 420 **CHAPTER 149**

AN ACT TO REVISE THE LAW GOVERNING THE PROCEDURES FOR FILING AND MAINTAINING SHAREHOLDER DERIVATIVE SUITS.

The General Assembly of North Carolina enacts:

Section 1. Part 4 of Article 7 of Chapter 55 of the General Statutes reads as rewritten:

"Part 4. Derivative Proceedings.

"*§ 55-7-40. Shareholders' derivative actions.*

~~(a) An action may be brought in the superior court of this State, which shall have exclusive original jurisdiction over actions brought hereunder, in the right of any domestic or foreign corporation by a shareholder or holder of a beneficial interest in shares of such corporation; provided that the plaintiff or plaintiffs must comply with the provisions of subsection (g) of this section, if applicable, and must allege, and it must appear, that each plaintiff was a shareholder or holder of a beneficial interest in such shares at the time of the transaction of which he complains or that his shares or beneficial interest in such shares devolved upon him by operation of law from a person who was a shareholder or holder of a beneficial interest in such shares at such time.~~

~~(b) The complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and the reasons for his failure to obtain the action or for not making the effort. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.~~

~~(c) Upon motion of the corporation, the court may appoint a committee composed of two or more disinterested directors or other disinterested persons, acceptable to the corporation, to determine whether it is in the best interests of the corporation to pursue a particular legal right or remedy. The committee shall report its findings to the court. After considering the~~

~~report and any other relevant evidence, the court shall determine whether the proceeding should be continued or not.~~

~~(d) Such action shall not be discontinued, dismissed, compromised or settled without the approval of the court. If the court shall determine that the interest of the shareholders or any class or classes thereof, or of the creditors of the corporation, will be substantially affected by such discontinuance, dismissal, compromise or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to such shareholders or creditors whose interests it determines will be so affected. If notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same, in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of such expense shall be awarded as costs of the action.~~

~~(e) If the action on behalf of the corporation is successful, in whole or part, whether by means of a compromise and settlement or by a judgment, the court may award the plaintiff the reasonable expenses of maintaining the action, including reasonable attorneys' fees, and shall direct the plaintiff to account to the corporation for the remainder of any proceeds of the action.~~

~~(f) In any such action the court, upon final judgement and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the defendant or defendants the reasonable expenses, including attorneys' fees, incurred by them in the defense of the action.~~

~~(g) In addition to all other provisions of this section, any action brought on behalf of a corporation that is a public corporation at the time of such action against one or more of its directors for monetary damages the plaintiff or plaintiffs must (i) allege, and it must appear, that each plaintiff has been a shareholder or holder of a beneficial interest in shares of the corporation for at least one year; (ii) bring the action within two years of the date of the transaction of which he complains; and (iii) execute and deposit with the clerk a written undertaking with sufficient surety, approved by the judge, in an amount to be fixed by the judge to indemnify the corporation against any and all expenses expected to be incurred by the corporation in connection with the proceeding, including those arising by way of indemnity, if the court in its discretion so requires.~~

~~(h) In proceedings hereunder, no shareholder shall be entitled to obtain or have access to any communication within the scope of the corporation's attorney-client privilege which could not be obtained by or would not be accessible to a party in an action other than on behalf of the corporation.~~

Subject to the provisions of G.S. 55-7-41 and G.S. 55-7-42, a shareholder may bring a derivative proceeding in the superior court of this State. The superior court has exclusive original jurisdiction over shareholder derivative actions.

"*§ 55-7-40.1. Definitions.*

In this Part:

(1) 'Derivative proceeding' means a civil suit in the right of a domestic corporation or, to the extent provided in G.S. 55-7-47, in the right of a foreign corporation.

(2) 'Shareholder' has the same meaning as in G.S. 55-1-40 and includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

"§ 55-7-41. *Standing.*

A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

"§ 55-7-42. *Demand.*

No shareholder may commence a derivative proceeding until:

(1) A written demand has been made upon the corporation to take suitable action; and

(2) 90 days have expired from the date the demand was made unless, prior to the expiration of the 90 days, the shareholder was notified that the corporation rejected the demand, or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

"§ 55-7-43. *Stay of proceedings.*

If the corporation commences an inquiry into the allegations set forth in the demand or complaint, the court may stay a derivative proceeding for a period of time the court deems appropriate.

"§ 55-7-44. *Dismissal.*

(a) The court shall dismiss a derivative proceeding on motion of the corporation if one of the groups specified in subsection (b) or (f) of this section determines in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interest of the corporation.

(b) Unless a panel is appointed pursuant to subsection (f) of this section, the inquiry and determination shall be made by:

(1) A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

(2) A majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not the independent directors constituted a quorum.

(c) For purposes of this section, none of the following factors by itself shall cause a director to be considered not independent:

(1) The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(2) The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(3) The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

(d) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing that the requirements of subsection (a) of this section have not been met. Defendants may make a motion to dismiss a complaint for failure to comply with this subsection. Prior to the court's ruling on a motion to dismiss for failure to comply with this subsection, the plaintiff shall be entitled to discovery only with respect to the issues presented by the motion and only if and to the extent that the plaintiff has alleged such facts with particularity. The preliminary discovery shall be limited solely to matters germane and necessary to support the facts alleged with particularity relating solely to the requirements of subsection (a) of this section.

(e) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the requirements of subsection (a) of this section have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met.

(f) The court may appoint a panel of one or more independent persons upon motion of the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interest of the corporation. The plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met.

"§ 55-7-45. *Discontinuance or settlement.*

(a) A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

(b) The court shall determine the manner and form of the notice and the manner in which costs of the notice shall be borne.

"§ 55-7-46. *Payment of expenses.*

On termination of the derivative proceeding, the court may:

(1) Order the corporation to pay the plaintiff's reasonable expenses, including attorneys' fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) Order the plaintiff to pay any defendant's reasonable expenses, including attorneys' fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) Order a party to pay an opposing party's reasonable expenses, including attorneys' fees, incurred as a result of the filing of a pleading, motion, or other paper, if the court, after reasonable inquiry, finds that the pleading, motion, or other paper was not

well grounded in fact or was not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it was interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

"*§ 55-7-47. Applicability to foreign corporations.*

In any derivative proceeding in the right of a foreign corporation, the matters covered by this Part shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for the matters governed by G.S. 55-7-43, 55-7-45, and 55-7-46.

"*§ 55-7-48. Suits against directors of public corporations.*

In addition to the requirements of this Part, the plaintiff in an action brought on behalf of a corporation that is a public corporation at the time of the action against one or more of its directors for monetary damages shall:

(1) Allege, and it must appear, that each plaintiff has been a shareholder or holder of a beneficial interest in shares of the corporation for at least one year;

(2) Bring the action within two years of the date of the transaction of which the plaintiff complains; and

(3) If the court orders, execute and deposit with the clerk of court a written undertaking with sufficient surety, approved by the court, to indemnify the corporation against any and all expenses reasonably expected to be incurred by the corporation in connection with the proceeding, including expenses arising by way of indemnity.

"*§ 55-7-49. Privileged communications.*

In any derivative proceeding, no shareholder shall be entitled to obtain or have access to any communication within the scope of the corporation's attorney-client privilege that could not be obtained by or would not be accessible to a party in an action other than on behalf of the corporation."

Sec. 2. This act becomes effective October 1, 1995, and applies to actions upon which shareholder derivative suits are based occurring on or after that date.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

H.B. 517 **CHAPTER 150**

AN ACT TO AMEND THE LAW PROHIBITING THE DISCHARGE OF FIREARMS ON REGISTERED LAND IN VANCE COUNTY BY PROVIDING FOR REGISTRATION AT ANY TIME AND BY ELIMINATING THE REQUIREMENT THAT REGISTRATION BE RENEWED ANNUALLY.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 903 of the 1985 Session Laws reads as rewritten:

"Sec. 2. Registration procedure. (a) A person who possesses land and wishes to register it under this act must apply to the sheriff in accordance with this section.

(b) A new registration application or a renewal application containing an amendment of the boundaries of the tract of registered land must be filed with the sheriff ~~between July 1 and August 1~~ and must contain:

(1) A statement under oath by the applicant that he is the possessor of the tract of land to be registered. If the applicant is not an owner, he must file a copy of his lease or other document granting him his right of general possession of or the control of hunting rights on the land.

(2) Three copies of a description of the tract that will allow law enforcement officers to determine in the field, and prove in court, whether an individual is within the boundaries of the tract. This description may take the form of a map, plat, aerial photograph showing boundaries, diagram keyed to known landmarks, or any other document or description that graphically demarks the boundaries with sufficient accuracy for use by officers in court and in the field.

(3) An agreement by the applicant to post the tract in accordance with the requirements of this section by August 15, and to make a continuing effort to maintain posted notices for the tract.

(4) An agreement by the applicant to issue or cause issuance of an entry permit to all individuals not exempted by Section 5(c) to whom he or his authorized agent gives permission to hunt or to discharge firearms on the tract or on any highway adjacent to the tract. The applicant must file the name and signature of any agent authorized by him to issue the entry permit.

(5) An agreement to notify the sheriff in writing immediately upon rescinding the authority of any agent and to file the name and signature of any new agent with the sheriff.

(6) A fee of ten dollars ($10.00) to cover the administrative costs of processing the registration application.

(c) No renewal of registration is required except as provided in subsection (b) for amending the boundaries of a tract of registered land and in subsection (d) for new possessors. A tract of land remains registered until the registrant requests in writing that the sheriff delete the tract of land from registration. ~~An application for annual renewal of registration in which there is no change of boundaries of the tract must be filed with the sheriff between July 1 and August 1 and must contain:~~

~~(1) A statement under oath by the applicant that he remains the possessor of the tract of registered land.~~

~~(2) A statement under oath that every posted notice required by this section has been reviewed within the 30 days preceding the application and a specification as to any failure of compliance with the posting requirements. If there is any such failure, the registrant must agree to bring his tract of registered land into full compliance with posting requirements by August 15.~~

~~(3) An agreement to make a continuing effort to maintain posted notices for the tract.~~

~~(4) An agreement to issue or cause issuance of an entry permit to all individuals not exempted by Section 5(c) to whom he or his authorized agent gives permission to hunt or to discharge firearms on the tract or on any highway adjacent to the tract. The registrant must list the name of each agent currently authorized by him to issue the entry permit, and must file the name and signature of any agent newly so authorized.~~

~~(5) An agreement to notify the sheriff in writing immediately upon rescinding the authority of an agent and to file the name and signature of any new agent with the sheriff.~~

~~(6) A fee of five dollars ($5.00) to cover the administrative costs of processing the renewal application.~~

(d) Within 20 days after a registrant loses his status as the possessor of all or any part of a tract of registered land, he must notify the sheriff of this fact. If there is a new possessor who wishes to retain the land's registered status, and there will be no change as to the overall boundaries of registered land, the new possessor may within 20 days after gaining this status apply to the sheriff to have the former registrant's application amended to designate him as the possessor of the transferred tract or portion of the tract. The amended application must ~~contain all the provisions of a renewal application under subsection (c), and the new possessor must pay a fee of five dollars ($5.00) to cover the administrative costs of processing the renewal application.~~ contain:

(1) A statement under oath by the applicant that he is the possessor of the tract of registered land.

(2) A statement under oath that every posted notice required by this section has been reviewed within the 30 days preceding the application and a specification as to any failure of compliance with the posting requirements. If there is any such failure, the registrant must agree to bring his tract of registered land into full compliance with posting requirements within 30 days of the application.

(3) An agreement to make a continuing effort to maintain posted notices for the tract.

(4) An agreement to issue or cause issuance of an entry permit to all individuals not exempted by Section 5(c) to whom he or his authorized agent gives permission to hunt or to discharge firearms on the tract or on any highway adjacent to the tract. The registrant must list the name of each agent currently authorized by him to issue the entry permit, and must file the name and signature of any agent newly so authorized.

(5) An agreement to notify the sheriff in writing immediately upon rescinding the authority of an agent and to file the name and signature of any new agent with the sheriff.

(6) A fee of five dollars ($5.00) to cover the administrative costs of processing the renewal application.

If there is any lapse as to the registered status of the land or any change as to boundaries of registered land, application must be made ~~between July 1 and August 1~~ under the provisions of subsection (b).

(e) The sheriff must first examine each application submitted under subsection (b) to determine whether the description of the tract will satisfy the provisions of subdivision (2). If the description is not adequate, the sheriff may in his discretion reject the application or require an amended description that does satisfy those provisions. If the application otherwise satisfies the provisions of subsection (b), the sheriff before September 1 must inspect the tract to be registered to determine whether the land is properly posted in compliance with this section. As to renewal applications, the sheriff must determine whether the provisions of subsection ~~(c)~~ (d) are met. Of the applications that do meet the requirements, he must make spot checks of the tracts of land covered by these applications before September 1 for compliance with the posting requirements of this section.

(f) By September 1 each year, the sheriff must:

(1) File with the Register of Deeds of Vance County a listing of all tracts of land accepted by him for registration during the ensuing year. This listing must contain an abbreviated description of the location of each tract of land so accepted.

(2) File with the Register of Deeds a copy of the full description of the boundaries of each tract accepted for registration that year under subsection (b). As to the remaining applications accepted, the sheriff must indicate in his filing with the Register of Deeds the year in which a full description was filed for that tract that met the requirements of subdivision (2) of subsection (b).

(3) File with the North Carolina Wildlife Resources Commission all of the material required to be filed with the Register of Deeds under subdivisions (1) and (2). The sheriff must also furnish the North Carolina Wildlife Resources Commission with a copy of the signature of each registrant and agent newly authorized to issue entry permits during the ensuing year, and a listing of agents no longer authorized to issue entry permits. In addition, throughout the year as registrants make changes with respect to their authorized agents or there are amended applications that substitute registrants, the sheriff must as soon as feasible inform the Commission of the changes and file with the Commission a copy of the signatures of new registrants and agents.

(4) Release for publication by appropriate media with coverage in Vance County the listing described in subdivision (1).

(5) Compile and maintain throughout the ensuing year in his office, so that the information is freely available to the public, all of the information covered by this subsection.

(g) Each registrant under this act must post his tract of registered land within the time limits agreed to by him in his registration application, and the registrant must from time to time inspect his registered land and repost the land to keep it in conformance with the requirements of this subsection. Posted notices must measure at least 120 square inches; contain the word 'POSTED' in letters at least three inches high; state that the land is

registered with the Sheriff of Vance County and that hunting and the discharge of firearms are prohibited without an entry permit. Notices must be conspicuously posted not more than 200 yards apart close to and along the boundaries of the tract. In any event, at least one notice must be placed on each side of the registered tract, one at each corner, one facing toward the traveled portion of each abutting highway, and one at each point of entry. A point of entry is where a roadway, trail, path, or other way likely to be used by entering hunters and marksmen leads into the tract. Notices posted along the boundaries of a tract must face in the direction that they will most likely be seen by hunters and marksmen.

(h) Any law enforcement officer or any employee of the North Carolina Wildlife Resources Commission who determines that a registrant has failed to keep registered property posted in substantial compliance with this section must so notify the registrant or his agent. If within a reasonable time after notice the registrant fails to take steps to post or repost the tract, or if without regard to notice a registrant is inexcusably or repeatedly negligent in failing to keep the tract properly posted, the sheriff upon learning of this must immediately delete registration of the tract, notify the registrant, or the present possessor if the registrant is no longer a possessor, and require that the responsible person remove any remaining posted notices.

(i) When ~~there is no renewal of an application for registration, when~~ the sheriff learns that a registrant is no longer the possessor of a registered tract of land and there has been no timely application by the new possessor to amend the registration, or when a registrant requests that his tract of land be deleted from registration, the sheriff must immediately delete the registration of the tract, notify the current possessor of his action, and require him to remove all posted notices.

(j) A possessor's failure to cause the removal of all posted signs within a reasonable time after receipt of notice that the tract has been deleted from registration is a misdemeanor punishable in the discretion of the court."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

H.B. 578 **CHAPTER 151**

AN ACT MAKING A QUALIFIED PUBLIC RECORDS EXCEPTION FROM THE PUBLIC RECORDS ACT FOR THE GEOGRAPHICAL INFORMATION SYSTEMS OF THE CITIES OF CONCORD, GREENSBORO, HIGH POINT, AND SALISBURY AND CABARRUS, CUMBERLAND AND GUILFORD COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 285 of the 1991 Session Laws, as amended by Chapter 845 of the 1991 Session Laws, Chapter 642 of the 1993 Session Laws, and Chapter 95 of the 1995 Session Laws, reads as rewritten:

"Sec. 2. This act applies to Brunswick, Cabarrus, Catawba, Cumberland, Dare, Guilford, Johnston, Lincoln, Orange, and Pamlico Counties and the

Cities of Chapel Hill, Carrboro, Concord, Conover, Greensboro, Hickory, High Point, Lincolnton, ~~and Newton~~ Newton, and Salisbury only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

H.B. 592 **CHAPTER 152**

AN ACT TO AMEND THE LAW PROHIBITING THE DISCHARGE OF FIREARMS ON REGISTERED LAND IN GRANVILLE COUNTY BY PROVIDING FOR REGISTRATION AT ANY TIME, BY ELIMINATING THE REQUIREMENT THAT REGISTRATION BE RENEWED ANNUALLY, AND BY PROVIDING THAT A REGISTRANT MUST FURNISH THE POSTED NOTICES REQUIRED TO COMPLY WITH THE LAW.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 159 of the 1991 Session Laws reads as rewitten:

"Sec. 2. Registration procedure.

(a) A person who possesses land and wishes to register it under this act must apply to the sheriff in accordance with this section.

(b) A new registration application or a renewal application containing an amendment of the boundaries of the tract of registered land must be filed with the sheriff ~~between July 1 and August 1~~ and must contain:

(1) A statement under oath by the applicant that he is the possessor of the tract of land to be registered. If the applicant is not an owner, he must file a copy of his lease or other document granting him his right of general possession of or the control of hunting rights on the land.

(2) Three copies of a description of the tract that will allow law enforcement officers to determine in the field, and prove in court, whether an individual is within the boundaries of the tract. This description may take the form of a map, plat, aerial photograph showing boundaries, diagram keyed to known landmarks, or any other document or description that graphically demarks the boundaries with sufficient accuracy for use by officers in court and in the field.

(3) An agreement by the applicant to post the tract in accordance with the requirements of this section by August 15, and to make a continuing effort to maintain posted notices for the tract.

(4) An agreement by the applicant to issue or cause issuance of an entry permit to all individuals not exempted by Section 5(c) to whom he or his authorized agent gives permission to hunt, or to possess a firearm or bow and arrow that is readily available for use, on the tract or on any highway adjacent to the tract. The applicant must file the name and signature of any agent authorized by him to issue the entry permit.

(5) An agreement to notify the sheriff in writing immediately upon rescinding the authority of any agent and to file the name and signature of any new agent with the sheriff.

(6) A fee of ten dollars ($10.00) to cover the administrative costs of processing the registration application.

(c) No renewal of registration is required except as provided in subsection (b) for amending the boundaries of a tract of registered land and in subsection (d) for new possessors. A tract of land remains registered until the registrant requests in writing that the sheriff delete the tract of land from registration. ~~An application for annual renewal of registration in which there is no change of boundaries of the tract must be filed with the sheriff between July 1 and August 1 and must contain:~~

~~(1) A statement under oath by the applicant that he remains the possessor of the tract of registered land.~~

~~(2) A statement under oath that every posted notice required by this section has been reviewed within the 30 days preceding the application and a specification as to any failure of compliance with the posting requirements. If there is any such failure, the registrant must agree to bring his tract of registered land into full compliance with posting requirements by August 15.~~

~~(3) An agreement to make a continuing effort to maintain posted notices for the tract.~~

~~(4) An agreement to issue or cause issuance of an entry permit to all individuals not exempted by Section 5(c) to whom he or his authorized agent gives permission to hunt, or to possess a firearm or bow and arrow that is readily available for use, on the tract or on any highway adjacent to the tract. The registrant must list the name of each agent currently authorized by him to issue the entry permit, and must file the name and signature of any agent newly so authorized.~~

~~(5) An agreement to notify the sheriff in writing immediately upon rescinding the authority of an agent and to file the name and signature of any new agent with the sheriff.~~

~~(6) A fee of five dollars ($5.00) to cover the administrative costs of processing the renewal application.~~

(d) Within 20 days after a registrant loses his status as the possessor of all or any part of a tract of registered land, he must notify the sheriff of this fact. If there is a new possessor who wishes to retain the land's registered status, and there will be no change as to the overall boundaries of registered land, the new possessor may within 20 days after gaining this status apply to the sheriff to have the former registrant's application amended to designate him as the possessor of the transferred tract or portion of the tract. The amended application must ~~contain all the provisions of a renewal application under subsection (c), and the new possessor must pay a fee of five dollars ($5.00) to cover the administrative costs of processing the renewal application.~~ contain:

(1) A statement under oath by the applicant that he is the possessor of the tract of registered land.

(2) A statement under oath that every posted notice required by this section has been reviewed within the 30 days preceding the application and a specification as to any failure of compliance with the posting requirements. If there is any such failure, the registrant must agree to bring his tract of registered land into full compliance with posting requirements within 30 days of the application.

(3) An agreement to make a continuing effort to maintain posted notices for the tract.

(4) An agreement to issue or cause issuance of an entry permit to all individuals not exempted by Section 5(c) to whom he or his authorized agent gives permission to hunt, or to possess a firearm or bow and arrow that is readily available for use, on the tract or on any highway adjacent to the tract. The registrant must list the name of each agent currently authorized by him to issue the entry permit, and must file the name and signature of any agent newly so authorized.

(5) An agreement to notify the sheriff in writing immediately upon rescinding the authority of an agent and to file the name and signature of any new agent with the sheriff.

(6) A fee of five dollars ($5.00) to cover the administrative costs of processing the renewal application.

If there is any lapse as to the registered status of the land or any change as to boundaries of registered land, application must be made ~~between July 1 and August 1~~ under the provisions of subsection (b).

(e) The sheriff must first examine each application submitted under subsection (b) to determine whether the description of the tract will satisfy the provisions of subdivision (2). If the description is not adequate, the sheriff may in his discretion reject the application or require an amended description that does satisfy those provisions. If the application otherwise satisfies the provisions of subsection (b), the sheriff before September 1 must inspect the tract to be registered to determine whether the land is properly posted in compliance with this section. As to renewal applications, the sheriff must determine whether the provisions of subsection ~~(c)~~ (d) are met. Of the applications that do meet the requirements, he must make spot checks of the tracts of land covered by these applications before September 1 for compliance with the posting requirements of this section.

(f) By September 1 each year, the sheriff must:

(1) File with the Register of Deeds of Granville County a listing of all tracts of land accepted by him for registration during the ensuing year. This listing must contain an abbreviated description of the location of each tract of land so accepted.

(2) File with the Register of Deeds a copy of the full description of the boundaries of each tract accepted for registration that year under subsection (b). As to the remaining applications accepted, the sheriff must indicate in his filing with the Register of Deeds the year in which a full description was filed for that tract that met the requirements of subdivision (2) of subsection (b).

(3) File with the North Carolina Wildlife Resources Commission all of the material required to be filed with the Register of Deeds under subdivisions (1) and (2). The sheriff must also furnish the North Carolina Wildlife Resources Commission with a copy of the signature of each registrant and agent newly authorized to issue entry permits during the ensuing year, and a listing of agents no longer authorized to issue entry permits. In addition, throughout the year as registrants make changes with respect to their authorized agents or there are amended applications that substitute registrants, the sheriff must as soon as feasible inform the Commission of the changes and file with the Commission a copy of the signatures of new registrants and agents.

(4) Release for publication by appropriate media with coverage in Granville County the listing described in subdivision (1).

(5) Compile and maintain throughout the ensuing year in his office, so that the information is freely available to the public, all of the information covered by this subsection.

(g) Each registrant under this act must post his tract of registered land within the time limits agreed to by him in his registration application, and the registrant must from time to time inspect his registered land and repost the land to keep it in conformance with the requirements of this subsection. Posted notices must measure at least 120 square inches; contain the word 'POSTED' in letters at least three inches high; state that the land is registered with the Sheriff of Granville County and that hunting and the possession of weapons are prohibited without an entry permit. Notices must be conspicuously posted not more than 200 yards apart close to and along the boundaries of the tract. In any event, at least one notice must be placed on each side of the registered tract, one at each corner, one facing toward the traveled portion of each abutting highway, and one at each point of entry. A point of entry is where a roadway, trail, path, or other way likely to be used by entering hunters and weapons possessors leads into the tract. Notices posted along the boundaries of a tract must face in the direction that they will most likely be seen by hunters and weapons possessors.

(h) Any law enforcement officer or any employee of the North Carolina Wildlife Resources Commission who determines that a registrant has failed to keep registered property posted in substantial compliance with this section must so notify the registrant or his agent. If within a reasonable time after notice the registrant fails to take steps to post or repost the tract, or if without regard to notice a registrant is inexcusably or repeatedly negligent in failing to keep the tract properly posted, the sheriff upon learning of this must immediately delete registration of the tract, notify the registrant, or the present possessor if the registrant is no longer a possessor, and require that the responsible person remove any remaining posted notices.

(i) When ~~there is no renewal of an application for registration, when~~ the sheriff learns that a registrant is no longer the possessor of a registered tract of land and there has been no timely application by the new possessor to amend the registration, or when a registrant requests that his tract of land be deleted from registration, the sheriff must immediately delete the registration

of the tract, notify the current possessor of his action, and require him to remove all posted notices.

(j) A possessor's failure to cause the removal of all posted signs within a reasonable time after receipt of notice that the tract has been deleted from registration is a misdemeanor punishable in the discretion of the court."

Sec. 2. Section 3 of Chapter 159 of the 1991 Session Laws reads as rewritten:

"Sec. 3. Entry permits and posted ~~notices furnished by sheriff.~~ notices.

(a) Upon initial or renewal registration of a tract of land, the sheriff must furnish the registrant with a reasonable number of entry permit forms to be carried by individuals given permission to hunt, or possess a firearm or bow and arrow that is readily available for use, on the registered land or on any highway abutting the registered land. The sheriff must establish a procedure for resupplying registrants and their agents with entry permit forms for their registered land as needed.

(b) To be valid, the entry permit must be issued and dated within the previous 12 months and signed by the registrant, or by an authorized agent of the registrant whose signature is on file with the sheriff.

(c) The ~~sheriff~~ registrant must procure a ~~stock~~ sufficient number of posted notices that meet the requirements of subsection (g) of Section 2 of this ~~act and, upon initial or renewal registration, furnish the registrant with a sufficient number of posted notices that he may comply with the posting requirements of this act. The sheriff must establish a procedure for supplying registrants with additional posted notices as needed for reposting in compliance with this act.~~ act in order to comply with the posting requirements of this act."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

H.B. 606 **CHAPTER 153**

AN ACT TO CLARIFY THE DUTIES OF THE TRUSTEE OF AN IRREVOCABLE LIFE INSURANCE TRUST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 36A-2 is amended by adding the following new subsections to read:

"(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the duties of a trustee with respect to acquiring or retaining a contract of insurance upon the life of the settlor, or the lives of the settlor and the settlor's spouse, do not include a duty (i) to determine whether any such contract is or remains a proper investment; (ii) to exercise policy options available under any such contract; or (iii) to diversify any such contract. A trustee is not liable to the beneficiaries of the trust or to any other party for any loss arising from the absence of those duties upon the trustee.

(d) The trustee of a trust described under subsection (c) of this section established prior to October 1, 1995, shall notify the settlor in writing that,

unless the settlor provides written notice to the contrary to the trustee within 60 days of the trustee's notice, the provisions of subsection (c) of this section shall apply to the trust. Subsection (c) of this section shall not apply if, within 60 days of the trustee's notice, the settlor notifies the trustee that subsection (c) of this section shall not apply."

Sec. 2. This act becomes effective October 1, 1995, and applies to trusts in existence on or after that date.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

H.B. 638 **CHAPTER 154**

AN ACT TO PERMIT THE CITY OF SANFORD AND THE GRAHAM COUNTY BOARD OF EDUCATION TO CONVEY CERTAIN PARCELS OF REAL PROPERTY AT PRIVATE SALE, TO ALLOW MONTGOMERY COUNTY TO ACQUIRE PROPERTY FOR USE BY MONTGOMERY COMMUNITY COLLEGE AND TO AUTHORIZE THE MONTGOMERY COMMUNITY COLLEGE BOARD OF TRUSTEES TO CONVEY PROPERTY TO THE COUNTY IN CONNECTION WITH IMPROVEMENT AND REPAIR OF THE PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of Article 12 of Chapter 160A of the General Statutes, the City of Sanford may convey at private sale, with or without monetary consideration, all its right, title, and interest in the following real property lying in Jonesboro Township, County of Lee, City of Sanford, and described as follows:

> Lying and being in Jonesboro Township, Lee County, North Carolina, and being all of parcels "P-1A", "P-1B", "P-4", and "P-5", shown on a survey entitled "Survey for City of Sanford, West Main Street, Woodland Avenue, and Academy Street" dated December 10, 1993, by Dowell G. Eakes, R.L.S., and recorded in Plat Cabinet 8, Slide 12-E, Lee County Register of Deeds Office. This real property will be sold subject to all encumbrances and easements of record.

Sec. 2. Notwithstanding the provisions of G.S. 115C-518, the Graham County Board of Education may convey at private sale any or all of its right, title, and interest to the old Stecoah School property to the Graham County Board of County Commissioners for any consideration negotiated between the two boards.

Sec. 3. Section 3 of Chapter 613 of the 1993 Session Laws reads as rewritten:

"Sec. 3. This act applies only to Sampson ~~County.~~ and Montgomery Counties."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

H.B. 758 CHAPTER 155

AN ACT TO ADJUST CHARGES BY LENDERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-176 reads as rewritten:

"*§ 53-176. Optional rates, maturities and amounts.*

In lieu of making loans in the amount and at the charges stated in G.S. 53-173 and for the terms stated in G.S. 53-180, a licensee may at any time elect to make loans in installments not exceeding ten thousand dollars ($10,000) and which shall not be repayable in less than six months or more than 84 months and which shall not be secured by deeds of trust or mortgages on real estate and which are repayable in substantially equal consecutive monthly payments and to charge and collect interest in connection therewith which shall not exceed the following actuarial rates:

(1) With respect to a loan not exceeding seven thousand five hundred dollars ($7,500), thirty percent (30%) per annum on that part of the unpaid principal balance not exceeding one thousand dollars ($1,000) and eighteen percent (18%) per annum on the remainder of the unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.

(2) With respect to a loan exceeding seven thousand five hundred dollars ($7,500), eighteen percent (18%) per annum on the outstanding principal balance.

In addition to the interest permitted in this section, a licensee may assess at closing a reasonable credit investigation charge as agreed upon by the parties, not to exceed the actual cost of the credit investigation; provided that such charges may not be assessed more than twice in any 12-month period. The Commissioner of Banks may review charges assessed pursuant to this section and may adopt appropriate rules in accordance with G.S. 53-185.

The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section.

Any licensee under this Article shall have the right to elect to make loans in accordance with this section by the filing of a written statement to that effect with the Commissioner and on date of such notification begin making loans regulated by this section for the following 12 months. Annually after such election a licensee may elect to make loans in accordance with this section unless the licensee notifies in writing the Commissioner of its intention to terminate such election.

The due date of the first monthly payment shall not be more than 45 days following the disbursement of funds under any such installment loan. A borrower under this section may prepay all or any part of a loan made under this section without penalty.

No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee ~~which~~ that is making loans under this Article ~~otherwise than~~ except as authorized

~~specially~~ in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee ~~making an election~~ that elects to make loans in accordance with the provisions of this section shall ~~respectively~~ be bound by ~~such~~ that election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their offices and locations in this State."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

H.B. 837 **CHAPTER 156**

AN ACT TO MODIFY THE TIME LIMIT WITHIN WHICH MOTOR VEHICLE MANUFACTURERS AND DISTRIBUTORS MAY AUDIT AND CHARGEBACK DEALERS FOR WARRANTY REPAIRS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-305.1(b) reads as rewritten:

"(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or recision or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty parts or service ~~compensation, service incentives, rebates, or other forms of sales incentive~~ compensation shall only be for the ~~24-month~~ 12-month period immediately following the date of the ~~claim.~~ payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the 24-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Provided, however, these limitations shall not be effective in the case of fraudulent claims."

Sec. 2. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

H.B. 958 **CHAPTER 157**

AN ACT TO AUTHORIZE REIMBURSEMENT FOR LICENSED PROFESSIONAL COUNSELORS UNDER THE STATE HEALTH PLAN FOR MENTAL HEALTH AND CHEMICAL DEPENDENCY TREATMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-40.7A(c) reads as rewritten:

"(c) Notwithstanding any other provision of this Part, provisions for benefits for necessary care and treatment of chemical dependency under this Part shall provide for benefit payments for the following providers of necessary care and treatment of chemical dependency:

(1) The following units of a general hospital licensed under Article 5 of General Statutes Chapter 131E:
   a. Chemical dependency units in facilities licensed after October 1, 1984;
   b. Medical units;
   c. Psychiatric units; and
(2) The following facilities licensed after July 1, 1984, under Article 2 of General Statutes Chapter 122C:
   a. Chemical dependency units in psychiatric hospitals;
   b. Chemical dependency hospitals;
   c. Residential chemical dependency treatment facilities;
   d. Social setting detoxification facilities or programs;
   e. Medical detoxification facilities or programs; and
(3) Duly licensed physicians and duly licensed practicing psychologists, certified clinical social workers, licensed professional counselors, certified clinical specialists in psychiatric and mental health nursing, and certified professionals working under the direct supervision of such physicians or psychologists in facilities described in (1) and (2) above and in day/night programs or outpatient treatment facilities licensed after July 1, 1984, under Article 2 of General Statutes Chapter 122C.

Provided, however, that nothing in this subsection shall prohibit the Plan from requiring the most cost effective treatment setting to be utilized by the person undergoing necessary care and treatment for chemical dependency."

Sec. 2. G.S. 135-40.7B(c) reads as rewritten:

"(c) Notwithstanding any other provisions of this Part, the following providers are authorized to provide necessary care and treatment for mental illness under this section:

(1) Licensed psychiatrists;
(2) Licensed or certified doctors of psychology;
(3) Certified clinical social workers;
(3a) Licensed professional counselors;

(4) Psychiatric nurses;
(5) Other social workers under the direct employment and supervision of a licensed psychiatrist or licensed doctor of psychology;
(6) Psychological associates with a master's degree in psychology under the direct employment and supervision of a licensed psychiatrist or licensed or certified doctor of psychology;
(7) Licensed psychiatric hospitals and licensed general hospitals providing psychiatric treatment programs; and
(8) Certified residential treatment facilities, community mental health centers, and partial hospitalization facilities."

Sec. 3. G.S. 90-338 reads as rewritten:

"*§ 90-338. Exemptions.*

Applicants holding certificates of registration as Registered Practicing Counselors and in good standing with the Board shall be issued licenses as licensed professional counselors without meeting the requirements of G.S. 90-336(b). The following applicants shall be exempt from the academic qualifications required by this Article for licensed professional counselors and shall be licensed upon passing the Board examination and meeting the experience requirements:

(1) An applicant who was engaged in the practice of counseling before July 1, ~~1993.~~ 1993, and who applies to the Board prior to January 1, 1996.
(2) An applicant who holds a masters degree from a college or university accredited by one of the regional accrediting associations or from a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution, provided the applicant was enrolled in the masters program prior to July 1, 1994."

Sec. 4. G.S. 90-330(a)(3) reads as rewritten:

"(3) The 'practice of counseling' means holding oneself out to the public as a professional counselor offering counseling services that include, but are not limited to, the following:

a. Counseling. -- Assisting individuals, groups, and families through the counseling ~~relationship, using~~ relationship by treating mental disorders and other conditions through the use of a combination of clinical mental health and human development principles, methods, diagnostic procedures, treatment plans, and other psychotherapeutic techniques, to develop an understanding of personal problems, to define goals, and to plan action reflecting the client's interests, abilities, aptitudes, and mental health needs as these are related to personal-social-emotional concerns, educational progress, and occupations and careers.
b. Appraisal Activities. -- Administering and interpreting tests for assessment of personal characteristics.
c. Consulting. -- Interpreting scientific data and providing guidance and personnel services to individuals, groups, or organizations.

d. Referral Activities. -- Identifying problems requiring referral to other specialists.

e. Research Activities. -- Designing, conducting, and interpreting research with human subjects."

Sec. 5. This act becomes effective October 1, 1995, and applies to claims for payment or reimbursement for services rendered on or after that date.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

S.B. 309 **CHAPTER 158**

AN ACT TO PROVIDE FOR THE FILING OF NOTICES OF LIS PENDENS IN THE ENFORCEMENT OF HOUSING AND BUILDING STANDARDS BY CITIES AND COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. Article 11 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"*§ 1-120.2. Filing of notice by cities and counties in certain cases.*

The governing body of a city or county may, by ordinance under Part 5 of Article 19 of Chapter 160A of the General Statutes relating to building inspection, or Part 6 of Article 19 of Chapter 160A relating to minimum housing standards, or Part 4 of Article 18 of Chapter 153A relating to building inspection, provide that upon the issuance of a complaint and notice of hearing or order pursuant thereto, a notice of lis pendens, with a copy of the complaint and notice of hearing or order attached thereto, may be filed in the office of the clerk of superior court of the county where the property is located. When a notice of lis pendens and a copy of the complaint and notice of hearing or order is filed with the clerk of superior court, it shall be indexed and cross-indexed in accordance with the indexing procedures of G.S. 1-117. From the date and time of indexing, the complaint and notice of hearing or order shall be binding upon the successors and assigns of the owners of and parties in interest in the building or dwelling. A copy of the notice of lis pendens shall be served upon the owners and parties in interest in the building or dwelling at the time of filing in accordance with G.S. 160A-428, 160A-445, or 153A-368 as applicable. The notice of lis pendens shall remain in full force and effect until cancelled. The ordinance may authorize the cancellation of the notice of lis pendens under certain circumstances. Upon receipt of notice from the city, the clerk of superior court shall cancel the notice of lis pendens."

Sec. 2. Chapter 221 of the Session Laws of 1987, as amended by Chapter 1038, Session Laws of 1987 and Chapter 418, Session Laws of 1989, is repealed.

Sec. 3. Section 7.2 of the Charter of the City of Gastonia, as revised by Chapter 557, Session Laws of 1991, is repealed.

Sec. 4. Section 3 of Chapter 532 of the 1991 Session Laws is repealed.

Sec. 5. This act becomes effective October 1, 1995. This act does not affect any notices or orders that were filed under any provisions repealed by this act.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

S.B. 384 **CHAPTER 159**

AN ACT RELATING TO PYROTECHNICS IN FORSYTH COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 130 of the Public-Local Laws of 1937 is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

S.B. 428 **CHAPTER 160**

AN ACT TO AMEND THE LAW REGARDING THE SUPPLEMENTAL WELFARE FUND FOR FIREMEN IN FORSYTH COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 2(d) of Chapter 418 of the 1969 Session Laws reads as rewritten:

"(d) at the close of each calendar year when the amount of funds in the Local Relief Fund shall, by reason of disbursements authorized by ~~G.S. 118-7,~~ G.S. 58-84-35, be less than ~~Ten Thousand Dollars ($10,000.00),~~ nine thousand dollars ($9,000), transfer from the Supplemental Welfare Fund an amount sufficient to maintain in the Local Relief Fund the sum of ~~Ten Thousand Dollars ($10,000.00),~~ nine thousand dollars ($9,000)."

Sec. 2. None of the provisions of this act shall create a liability for the Forsyth County Supplemental Welfare Fund for Firemen or for the State unless sufficient current assets are available in the fund to pay fully for the liability.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

S.B. 707 **CHAPTER 161**

AN ACT TO AMEND THE LAW RELATING TO THE SHARE OF AFTER-BORN OR AFTER-ADOPTED CHILDREN, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 31-5.5(a) reads as rewritten:

"(a) A will shall not be revoked by the subsequent birth of a child to the testator, or by the subsequent adoption of a child by the testator, or by the

subsequent entitlement of an after-born illegitimate child to take as an heir of the testator pursuant to the provisions of G.S. 29-19(b), but any after-born, after-adopted or entitled after-born illegitimate child shall have the right to share in the testator's estate to the same extent he would have shared if the testator had died intestate unless:

(1) The testator made some provision in the will for the child, whether adequate or ~~not, or~~ not;

(2) It is apparent from the will itself that the testator intentionally did not make specific provision therein for the ~~child.~~ child;

(3) The testator had children living when the will was executed, and none of the testator's children actually take under the will;

(4) The surviving spouse receives all of the estate under the will;

(5) The testator made provision for the child that takes effect upon the death of the testator, whether adequate or not."

Sec. 2. This act becomes effective October 1, 1995, and applies to estates of decedents dying on or after that date.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 68 **CHAPTER 162**

AN ACT TO ALLOW THE TOWN OF BEECH MOUNTAIN TO REQUIRE THAT RENTAL RESIDENTIAL DWELLING UNITS HAVE SMOKE DETECTORS AND FIRE EXTINGUISHERS.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Beech Mountain, being Chapter 246 of the 1981 Session Laws, is amended by adding a new Article to read:

"ARTICLE IX.

"SMOKE DETECTORS AND FIRE EXTINGUISHERS.

"Sec. 9.1. Smoke Detectors and Fire Extinguishers. (a) Notwithstanding any provisions of the North Carolina State Building Code or any general or local law, the Town of Beech Mountain may by ordinance require the owners of rental residential dwelling units, not required by the State Building Code to have smoke detectors, to install smoke detectors within 90 days from the passage of the ordinance.

(b) Notwithstanding any provisions of the North Carolina State Building Code or any general or local law, the Town of Beech Mountain may by ordinance require the owners of rental residential dwelling units, not required by the State Building Code to have fire extinguishers, to install fire extinguishers in such units within 90 days from the passage of the ordinance."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 134 CHAPTER 163

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE MOTOR VEHICLE LAWS AND OTHER LAWS CONCERNING THE DEPARTMENT OF TRANSPORTATION, AND TO VALIDATE CERTAIN RECORDED INSTRUMENTS WHERE SEALS HAVE BEEN OMITTED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-16.2 reads as rewritten:

"*§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.*

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer must designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged must be taken before a chemical analyst authorized to administer a test of a person's breath, who must inform the person orally and also give the person a notice in writing that:

(1) ~~He~~ The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of ~~his~~ the person's driving privilege for at least 10 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of ~~his~~ the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) ~~His~~ The person's driving privilege will be revoked immediately for at least 10 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. ~~He~~ The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.

(5) ~~He~~ The person may ~~have a qualified person of his own choosing~~ choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.

(6) ~~He~~ The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time ~~he~~ when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's ~~breath and the charging officer designates a chemical analysis of the blood of the person charged~~, breath, the charging officer or the arresting officer may give the person charged the oral and

written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.

(a1) Meaning of Terms. -- Under this section, an 'implied-consent offense' is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is 'charged' with an offense if ~~he~~ the person is arrested for it or if criminal process for the offense has been issued. A 'charging officer' is a law-enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.

(b) Unconscious Person May Be Tested. -- If a charging officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes ~~him~~ the person incapable of refusal, the charging officer may direct the taking of a blood sample by a person qualified under G.S. 20-139.1 or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical Analysis; Procedure upon Refusal. -- The charging officer, in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law. ~~Then~~ If the person refuses to submit to the chemical analysis, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit stating that the person charged, after being advised of his or her rights under subsection (a), willfully refused to submit to a chemical analysis at the request of the charging officer. The charging officer must immediately mail the affidavit to the Division. If the person's refusal to submit to a chemical analysis occurs in a case involving death or critical injury to another person, the charging officer must include that fact in the affidavit mailed to the Division. If the charging officer is also the chemical analyst who has notified the person of his or her rights under subsection (a), the charging officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. -- Upon receipt of a properly executed affidavit required by subsection (c), the Division must expeditiously notify the person charged that ~~his~~ the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the

Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, ~~he~~ the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws ~~his~~ the request, or ~~he~~ the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents ~~he~~ that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if ~~he~~ the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness ~~he~~ whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The person was charged with an implied-consent offense;
(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense;
(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;
(4) The person was notified of his or her rights as required by subsection (a); and
(5) The person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it must rescind the revocation. If it finds that conditions (3) is alleged in the affidavit but is not met, it must order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person must surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. -- If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked ~~pursuant to~~ under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date ~~he~~ on which the person would otherwise have been eligible for such a hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. -- If the revocation is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.

(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal ~~he~~ the person held either a valid driver's license or a license that had been expired for less than one year;
(2) At the time of the refusal, ~~he~~ the person had not within the preceding seven years been convicted of an offense involving impaired driving;
(3) At the time of the refusal, ~~he~~ the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;
(4) The implied-consent offense charged did not involve death or critical injury to another person;
(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:
    a. Other than by conviction; or
    b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and ~~he~~ the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which ~~he~~ the defendant was sentenced;
(6) Subsequent to the refusal ~~he~~ the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving; and
(7) ~~His~~ The person's license has been revoked for at least six months for the refusal.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing must be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing must be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if ~~his~~ the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. -- When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division must give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which ~~he~~ the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer must afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person must confirm ~~his~~ the request in writing and ~~he~~ must be notified:

(1) That the test results will be admissible in evidence and may be used against ~~him~~ the person in any implied-consent offense that may arise;

(2) That ~~his~~ the person's license will be revoked for at least 10 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. ~~He~~ The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if ~~he~~ the person fails to comply fully with the test procedures, the officer may charge ~~him~~ the person with any offense for which the officer has probable cause, and if ~~he~~ the person is charged with an implied-consent offense, ~~his~~ the person's refusal to submit to the testing required as a result of that charge would result in revocation of ~~his~~ the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Sec. 2. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the ~~Recreation and~~ Natural Heritage Trust Fund ~~(RNHTF),~~ (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	~~RNHTF~~ NHTF
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15

Personalized	$10	0	$10
Special Olympics	$10	$15	0
State Attraction	$10	$20	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

Sec. 3. G.S. 20-82 is repealed.

Sec. 4. G.S. 20-118(b)(12) reads as rewritten:

"(12) Subsections (b) and (e) of this section do not apply to a vehicle that meets one of the following descriptions, is hauling agricultural crops from the farm where they were grown to first market, is within 35 miles of that farm, does not operate on an interstate highway while hauling the crops, and does not exceed its registered weight:

a. Is a five-axle combination with a gross weight of no more than 88,000 pounds, a single-axle weight of no more than 22,000 pounds, a tandem-axle weight of no more than 42,000 pounds, and a length of at least 51 feet between the first and last axles of the combination.

b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.

c. Is a four-axle combination with a gross weight that does not exceed the limit set in subdivision (b)(3) of this section, a single-axle weight of no more than 22,000 pounds, and a tandem-axle weight of no more than 42,000 pounds."

Sec. 5. G.S. 20-297 reads as rewritten:

"*§ 20-297. ~~Inspection of records, etc.~~ Retention and inspection of certain records.*

(a) Vehicles. -- A dealer must keep a record of all vehicles received by the dealer and all vehicles sold by the dealer. The records must contain the information that the Division requires.

(b) Inspection. -- The Division may inspect the pertinent books, records, ~~letters~~ letters, and contracts of a licensee relating to any written complaint made to ~~him against such~~ the Division against the licensee."

Sec. 6. G.S. 20-88(f) is repealed.

Sec. 7. G.S. 20-135.2B(b) reads as rewritten:

"(b) Subsection (a) of this section ~~shall not apply when:~~ does not apply in any of the following circumstances:

(1) An adult is present in the bed or cargo area of the vehicle and is supervising the ~~child;~~ child.

(2) The child is secured or restrained by a seat belt manufactured in compliance with Federal Motor Vehicle Safety Standard No. 208, installed to support a load strength of not less than 5,000 pounds for each belt, and of a type approved by the ~~Commissioner;~~ Commissioner.

(3) An emergency situation ~~exists;~~ exists.

(4) The vehicle is being operated in a parade pursuant to a valid permit.

(5) The vehicle is being operated in an agricultural ~~enterprise; or~~ enterprise.

(6) ~~the~~ The vehicle is being operated in a county ~~which~~ that has no incorporated area with a population in excess of 3,500."

Sec. 8. G.S. 20-141.3(a) reads as rewritten:

"(a) It shall be unlawful for any person to operate a motor vehicle on a street or highway willfully in prearranged speed competition with another motor vehicle. Any person violating the provisions of this subsection shall be guilty of a Class ~~2~~ 1 misdemeanor."

Sec. 9. G.S. 20-141.3(b) reads as rewritten:

"(b) It shall be unlawful for any person to operate a motor vehicle on a street or highway willfully in speed competition with another motor vehicle. Any person willfully violating the provisions of this subsection shall be guilty of a Class ~~1~~ 2 misdemeanor."

Sec. 10. G.S. 20-183.2(b)(5) reads as rewritten:

"(5) It meets any of the following descriptions:

a. It is required to be registered in an emissions county.
b. It is part of a fleet that is operated primarily in an emissions county.
c. It is offered for rent in an emissions county.
d. It is offered for sale by a dealer in an emissions ~~county.~~ county and is not a new vehicle that has not been titled.
e. It is operated on a federal installation located in an emissions county and it is not a tactical military vehicle. Vehicles operated on a federal installation include those that are owned or leased by employees of the installation and are used to commute to the installation and those owned or operated by the federal agency that conducts business at the installation.
f. It is otherwise required by 40 C.F.R. Part 51 to be subject to an emissions inspection."

Sec. 11. G.S. 20-183.8C(c) reads as rewritten:

"(c) Type III. -- It is a Type III violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Fail to post an emissions license issued by the Division.
(2) Fail to send information on emissions inspections to the Division at the time or in the form required by the Division."

Sec. 12. G.S. 20-183.12 is repealed.

Sec. 13. G.S. 20-305(5)b.6. reads as rewritten:

"6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and".

Sec. 14. G.S 136-66.1(4) reads as rewritten:

"(4) If the governing body of any municipality ~~shall determine~~ determines that it is in the best interest of its citizens to do so, it may expend its funds for the purpose of making any of the following improvements on streets that are within its corporate limits ~~which~~ and form a part of the State highway system:

a. Construction of curbing and ~~guttering;~~ guttering.

b. Adding of lanes for automobile ~~parking;~~ parking.
c. Constructing street drainage facilities which may by reasonable engineering estimates be attributable to that amount of surface water collected upon and flowing from municipal streets which do not form a part of the State highway ~~system;~~ system.
d. Constructing sidewalks.
e. Intersection improvements, if the governing body determines that such improvements will decrease traffic congestion, improve safety conditions, and improve air quality.

In exercising the authority granted herein, the municipality may, with the consent of the Department of Transportation, perform the work itself, or it may enter into a contract with the Department of Transportation to perform such work. Any work authorized by this subdivision shall be financed entirely by the municipality and be approved by the Department of Transportation.

The cost of any work financed by a municipality ~~pursuant to~~ under this subdivision may be assessed against the properties abutting the street or highway upon which such work was performed in accordance with the procedures of either Article 10 of Chapter 160A of the General Statutes or any charter provisions or local acts applicable to the particular municipality."

Sec. 15. G.S. 136-92 reads as rewritten:

"*§ 136-92. Obstructing highway drains ~~misdemeanor.~~ prohibited.*

~~Any person who shall obstruct any drains~~ It is unlawful to obstruct a drain along or leading from any public road in the ~~State shall be guilty of a Class 3 misdemeanor, and punished only by a fine of not less than ten ($10.00) nor more than one hundred dollars ($100.00).~~ State. A person who violates this section is responsible for an infraction."

Sec. 16. G.S. 47-108.11 reads as rewritten:

"*§ 47-108.11. Validation of recorded instruments where seals have been omitted.*

In all cases of any deed, deed of trust, mortgage, lien or other instrument authorized or required to be registered in the office of the register of deeds of any county in this State where it appears of record or it appears that from said instrument, as recorded in the office of the register of deeds of any county in the State, there has been omitted from said recorded or registered instrument the word 'seal,' 'notarial seal' and that any of said recorded or registered instruments shows or recites that the grantor or grantors 'have hereunto fixed or set their hands and seals' and the signature of the grantor or grantors appears without a seal thereafter or on the recorded or registered instrument or in all cases where it appears there is an attesting clause which recites 'signed, sealed and delivered in the presence of,' and the signature of the grantor or grantors appears on the recorded or registered instrument without any seal appearing thereafter or of record, then all such deeds, mortgages, deeds of trust, liens or other instruments, and the registration of same in the office of the register of deeds, are hereby declared to be in all

respects valid and binding and are hereby made in all respects valid and binding to the same extent as if the word 'seal' or 'notarial seal' had not been omitted, and the registration and recording of such instruments in the office of the register of deeds in any county in this State are hereby declared to be valid, proper, legal and binding registrations.

This section shall not apply in any respect to any instrument recorded or registered subsequent to January 1, ~~1991,~~ 1995 or to pending litigation or to any such instruments now directly or indirectly involved in pending litigation."

Sec. 17. Sections 8, 9, and 15 of this act become effective July 1, 1995, and apply to offenses occurring on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 173 **CHAPTER 164**

AN ACT TO CREATE A SAFETY ZONE AROUND MERCHANTS MILLPOND STATE PARK BY PROHIBITING HUNTING IN THE VICINITY OF THE PARK.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful for any person to hunt with or possess a centerfire rifle or pistol in that part of Gates County bordered to the north by U.S. Highway 158, to the west by State Road 1403/1400, to the south by State Road 1404, and to the east by N.C. Highway 32.

Sec. 2. It is unlawful for any person to discharge or cause to be discharged a centerfire rifle or pistol toward Merchants Millpond State Park or to cause any projectile to enter the park property for any reason.

Sec. 3. Section 1 of this act shall not apply to a landowner or lessee of property possessing a centerfire rifle or pistol for self-protection or to prevent crop depredation or to a person transporting a firearm on a State-maintained road or highway within or on any motor vehicle.

Sec. 4. Violation of this act is a Class 3 misdemeanor.

Sec. 5. This act is enforceable by officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

Sec. 6. This act becomes effective September 1, 1995.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 314 **CHAPTER 165**

AN ACT TO AMEND THE LAW RELATING TO MOUNT AIRY'S FIREFIGHTERS' SUPPLEMENTARY FUND.

The General Assembly of North Carolina enacts:

Section 1. Chapter 302 of the 1967 Session Laws, as amended by Chapter 12 of the 1969 Session Laws and Chapter 121 of the 1973 Session Laws, reads as rewritten:

"Section 1. There is ~~hereby~~ established a Supplementary Pension Fund for the Fire Department of the ~~Town~~ City of Mount Airy, North Carolina, ~~said~~ which fund is to be known as the 'Mount Airy ~~Firemen's~~ Firefighters' Supplementary Pension ~~Fund~~' Fund', ~~herein after~~ referred to as ~~'Supplementary Pension Fund'~~ the Supplementary Pension Fund. ~~and said fund~~ This fund is to be administered by a five-member ~~board of trustees~~ Board of Trustees composed of the ~~City Treasurer~~ Finance Director of the ~~Town~~ City of Mount Airy, the Chief of the Fire Department of Mount ~~Airy~~ Airy, and three ~~(3)~~ members of ~~said~~ the board to be elected ~~annually~~ in annual elections for staggered two-year terms from the membership of the City of Mount Airy Fire Department by a majority vote of its members.

Sec. 2. ~~That all~~ All funds in the Firemen's Relief Fund of the ~~Town~~ City of Mount ~~Airy~~ Airy, referred to as the Firemen's Relief Fund, in excess of five thousand dollars ($5,000) shall be transferred to the ~~'Supplementary Pension Fund'~~ Supplementary Pension Fund so as to retain in the Firemen's Relief Fund an amount of money not greater than five thousand dollars ($5,000); provided, however, the Firemen's Relief Fund shall have restored ~~such~~ the sums from recurring annual receipts ~~as~~ that are necessary to maintain a fund of not less than five thousand dollars ($5,000); provided further, that, of the funds and subsequent recurring increments ~~thereto~~ transferred from the Firemen's Relief Fund ~~of the Town of Mount Airy~~ to the ~~'Supplementary Pension Fund'~~, Supplementary Pension Fund, any or all of the ~~same~~, same ~~shall be retrievable~~ may be retrieved by and to the Firemen's Relief Fund ~~of the Town of Mount Airy~~ in order to defray and meet ~~such~~ the legitimate claims ~~which~~ that accrue under the provisions and coverage of the Firemen's Relief ~~Fund of the Town of Mount Airy.~~ Fund.

Sec. 3. Any person who is a member of the City of Mount Airy Fire Department, ~~salaried or volunteer~~, career or part-time, as shown by the records of the ~~Town~~ City of Mount Airy at the time of the ratification of this Act, or any person who shall become such a member, ~~salaried or volunteer~~, career or part-time, shall be eligible for benefits from the ~~'Supplementary Pension Fund' of the Fire Department of the Town of Mount Airy.~~ Supplementary Pension Fund. It is further provided that this Act does not modify or alter in any way ~~the Workmen's Compensation Laws of the State of North Carolina.~~ North Carolina's Workers' Compensation Laws.

Sec. 4. Any member who has served 20 years as a ~~fireman~~ firefighter in the City of Mount Airy Fire Department and has attained the age of 55 years, shall be entitled to receive retirement benefits from the ~~'Supplementary Pension Fund'~~; Supplementary Pension Fund; ~~said~~ this monthly pension shall be computed on the basis of ~~$1.25~~ a defined amount per month for each year of service in the department. The Board of Trustees shall define the amount used as the basis for the monthly pension, and may adjust the amount when the board determines it appropriate, necessary, or imperative to keep or maintain the Supplementary Pension Fund on a good, solid financial basis, while providing a level of benefits consistent with funding. Any adjustments made are effective for firefighters

not currently receiving a benefit as well as retired firefighters currently receiving a benefit.

~~The Board of Trustees may, in its discretion, adjust the monthly payment of the retired fireman receiving a benefit from the 'Supplementary Pension Fund', when the board determines it necessary or imperative to keep or maintain the 'Supplementary Pension Fund' on a good solid financial basis.~~

Sec. 5. The ~~City Treasurer~~ Finance Director of the ~~Town~~ City of Mount Airy, as a member of the ~~board of trustees~~ Board of Trustees of the ~~'Supplementary Pension Fund'~~ Supplementary Pension Fund, shall be treasurer and custodian of the ~~said~~ fund and shall pay the beneficiaries ~~thereof on the first day of~~ on a regular basis each ~~and every~~ month any moneys in ~~his~~ possession that ~~such~~ the beneficiaries may be entitled to under the provisions of this Act.

Sec. 6. The ~~City Treasurer~~ Finance Director of the ~~Town~~ City of Mount Airy, as custodian of the ~~'Supplementary Pension Fund',~~ Supplementary Pension Fund, shall be required to give a bond with an indemnity company authorized to do business in the State ~~of North Carolina~~ as surety in a sum equal to one and one quarter times the maximum amount estimated by the ~~board of trustees~~ Board of Trustees as likely to be in ~~his~~ possession as ~~such~~ the custodian at any time within the fiscal year for which the bond is given. The condition of ~~said~~ the bond shall be that ~~said~~ the custodian ~~shall~~ shall, pursuant to this section, faithfully receive, keep, disburse, and account ~~for, as herein provided,~~ for all funds and property coming into ~~his~~ the director's hands as ~~such~~ custodian, and the premiums on ~~said~~ this bond shall be paid out of the ~~'Supplementary Pension Fund',~~ Supplementary Pension Fund.

Sec. 7. The ~~said~~ custodian of ~~said 'Supplementary Pension Fund' is authorized and directed to~~ the Supplementary Pension Fund shall invest all moneys coming into ~~his~~ possession belonging to ~~said Supplementary Pension Fund,~~ the Supplementary Pension Fund, except so much as the ~~board of trustees~~ Board of Trustees from time to time ~~determine~~ determines is reasonably necessary for the prompt payment of claims and expenses, in ~~such~~ those securities ~~as the board of trustees~~ that the board shall ~~elect: Provided,~~ elect; provided, however, that ~~such~~ these securities shall be limited to, and upon, the same conditions as those enumerated by the General Statutes ~~of North Carolina, as amended,~~ as to the investment of trust funds, ~~and/or~~ and the funds of guardians.

Sec. 8. The ~~board of trustees~~ Board of Trustees ~~as herein provided for~~ may, in its discretion, take and receive any gift, grant, bequest, or devise or any real or personal property or other things of value for, and as, the property of ~~said 'Supplementary Pension Fund' and hold and disburse and~~ the Supplementary Pension Fund and hold, disburse, and invest the same for the use of ~~said~~ the fund in accordance with the purpose of this Act and the conditions attached to any such gift, grant, ~~bequest~~ bequest, or devise.

Sec. 9. The provisions of ~~Chapter 118~~ Article 84 of Chapter 58 of the General Statutes ~~of North Carolina~~ creating a Firemen's Relief Fund are repealed as to the ~~Town~~ City of Mount Airy insofar and only insofar as ~~said~~ these provisions are inconsistent with and contradictory to the provisions of this Act.

Sec. 10. All laws and clauses of laws in conflict with the provisions of this Act are ~~hereby~~ repealed.

Sec. 11. This Act shall be in full force and effect from and after its ratification.

Sec. 12. None of the provisions of this Act shall create a liability for the Mount Airy Firefighters' Supplementary Pension Fund or for the State unless sufficient current assets are available in the Fund to pay fully for the liability. Under no circumstances shall the State incur any liability as a result of this Act."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 423 **CHAPTER 166**

AN ACT TO PROVIDE FOR THE DISTRIBUTION OF COPIES OF CERTAIN PUBLICATIONS TO THE STATE PERSONNEL COMMISSION AND TO THE OFFICE OF STATE PERSONNEL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-343.1 reads as rewritten:

"*§ 7A-343.1. Distribution of copies of the appellate division reports.*

The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:

Governor, Office of the	1
Lieutenant Governor, Office of the	1
Secretary of State, Department of the	2
State Auditor, Department of the	1
Treasurer, Department of the State	1
Superintendent of Public Instruction	1
Office of the Attorney General	11
State Bureau of Investigation	1
Agriculture, Department of	1
Labor, Department of	1
Insurance, Department of	1
Budget Bureau, Department of Administration	1
Property Control, Department of Administration	1
State Planning, Department of Administration	1
Board of Environment, Health, and Natural Resources	1
Revenue, Department of	1
Board of Human Resources	1
Commission for the Blind	1
Board of Transportation	1
Motor Vehicles, Division of	1
Utilities Commission	8
Industrial Commission	11
State Personnel Commission	1

Office of State Personnel	1
Office of Administrative Hearings	2
Community Colleges, Department of	38
Employment Security Commission	1
Commission of Correction	1
Parole Commission	1
Archives and History, Division of	1
Crime Control and Public Safety, Department of	2
Department of Cultural Resources	3
Legislative Building Library	2
Justices of the Supreme Court	1 ea.
Judges of the Court of Appeals	1 ea.
Judges of the Superior Court	1 ea.
Clerks of the Superior Court	1 ea.
District Attorneys	1 ea.
Emergency and Special Judges of the Superior Court	1 ea.
Supreme Court Library	AS MANY AS REQUESTED
Appellate Division Reporter	1
University of North Carolina, Chapel Hill	71
University of North Carolina, Charlotte	1
University of North Carolina, Greensboro	1
University of North Carolina, Asheville	1
North Carolina State University, Raleigh	1
Appalachian State University	1
East Carolina University	1
Fayetteville State University	1
North Carolina Central University	17
Western Carolina University	1
Duke University	17
Davidson College	2
Wake Forest University	25
Lenoir Rhyne College	1
Elon College	1
Campbell College	25
Federal, Out-of-State and Foreign	
Secretary of State	1
Secretary of Defense	1
Secretary of Health, Education and Welfare	1
Secretary of Housing and Urban Development	1
Secretary of Transportation	1
Attorney General	1
Department of Justice	1
Internal Revenue Service	1
Veterans' Administration	1
Library of Congress	5
Federal Judges resident in North Carolina	1 ea.
Marshal of the United States Supreme Court	1
Federal District Attorneys resident in North Carolina	1 ea.
Federal Clerks of Court resident in North Carolina	1 ea.

Supreme Court Library exchange list	1

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for his private use, one complete and up-to-date set of the appellate division reports. The copies of reports furnished each justice or judge as set out in the table above may be retained by him personally to enable him to keep up-to-date his personal set of reports."

Sec. 2. G.S. 147-45 reads as rewritten:

"*§ 147-45. Distribution of copies of State publications.*

The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and to educational institutions of instruction and exchange use, as is set out in the table below:

Agency or Institution	Session Laws	Assembly Journals
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
State Board of Education	1	0
Department of Public Instruction	3	1
Controller	1	0
Technical Assistance Centers	1 ea.	0
Department of Community Colleges	3	1
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture, Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0
Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Environment, Health, and Natural Resources, Department of	1	0
Division of Environmental Management	2	0
Board of Environment, Health, and Natural Resources	1	0
Soil and Water Conservation Commission	1	0
Wildlife Resources Commission	2	0
Revenue, Department of	5	1

Human Resources, Department of	3	0
Board of Human Resources	1	0
Health Services, Division of	3	0
Mental Health, Developmental Disabilities, and Substance Abuse Services, Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Youth Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
Transportation, Department of	1	0
Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control Commission, North Carolina	2	0
Banking Commission	2	0
Utilities Commission	8	1
Industrial Commission	7	0
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Department of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety, Department of	2	1
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0
Office of Administrative Hearings	2	0
State Personnel Commission	1	0
Office of State Personnel	1	1
Legislative Branch		
State Senators	1 ea.	1 ea.
State Representatives	1 ea.	1 ea.
Principal Clerk -- Senate	1	1
Principal Clerk -- House	1	1
Reading Clerk -- Senate	1	1
Reading Clerk -- House	1	1
Sergeant at Arms -- House	1	1
Sergeant at Arms -- Senate	1	1

Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	35	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1
Supreme Court Library	AS MANY AS REQUESTED	
Colleges and Universities		
The University of North Carolina System		
Administrative Offices	3	0
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1
East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and Technical University	2	1
North Carolina Central University	5	5
Western Carolina University	2	1
Pembroke State University	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1
Campbell College	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
Atlantic Christian College	1	1
Shaw University	1	1

St. Augustine's College	1	1
J.C. Smith University	1	1
Belmont Abbey College	1	1
Bennett College	1	1
Catawba College	1	1
Gardner-Webb College	1	1
Greensboro College	1	1
High Point College	1	1
Livingstone College	1	1
Mars Hill College	1	1
Meredith College	1	1
Methodist College	1	1
North Carolina Wesleyan College	1	1
Queens College	1	1
Sacred Heart College	1	1
St. Andrews Presbyterian College	1	1
Salem College	1	1
Warren Wilson College	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.
Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0
Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0

Federal Clerks of Court resident in North Carolina	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

One copy of the Session Laws shall be furnished the head of any department of State government created in the future.

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 446 **CHAPTER 167**

AN ACT MODIFYING CONTRACT LETTING PROCEDURES AND LIMITATIONS APPLICABLE TO THE DEPARTMENT OF TRANSPORTATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-28.1 reads as rewritten:

"*§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.*

(a) All contracts over ~~three hundred thousand dollars ($300,000)~~ five hundred thousand dollars ($500,000) that the Department of Transportation may let for construction or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal-aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.131(a) for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. The Department of Transportation shall use only the contract provisions provided in the North Carolina Department of Transportation, Standard Specifications for Roads and Structures, January 1, 1984, except as each may be changed or provided for by rule adopted by the Board of Transportation in accordance with the Administrative Procedure Act.

(b) In those cases in which the amount of work to be let to contract for highway ~~construction~~ construction, maintenance, or repair is ~~three hundred thousand dollars ($300,000)~~ five hundred thousand dollars ($500,000) or less, at least three informal bids shall be solicited. The term 'informal bids' is defined as bids in writing, received pursuant to a written request, without public advertising. All such contracts shall be awarded to the lowest responsible bidder. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time after the bids are opened.

(c) The ~~construction~~ construction, maintenance, and repair of ferryboats and all other marine floating equipment and the construction and repair of

all types of docks by the Department of Transportation shall be deemed highway ~~construction~~ construction, maintenance, or repair for the purpose of G.S. 136-28.1 and Chapter 44A and Article 1 of Chapter 143, 'The Executive Budget Act.' In cases of a written determination by the Secretary of Transportation that the requirement for compatibility does not make public advertising feasible for the repair of ferryboats, the public advertising as well as the soliciting of informal bids may be waived.

(d) The ~~construction~~ construction, maintenance, and repair of the highway rest area buildings and facilities, weight stations and the Department of Transportation's participation in the construction of welcome center buildings shall be deemed highway ~~construction~~ construction, maintenance, or repair for the purpose of G.S. 136-28.1 and 136-28.3 and Article 1 of Chapter 143 of the General Statutes, 'The Executive Budget Act.'

(e) The Department of Transportation may enter into contracts for ~~construction~~ construction, maintenance, or repair without complying with the bidding requirements of this section upon a determination of the Secretary of Transportation or the State Highway Administrator that an emergency exists and that it is not feasible or not in the public interest for the Department of Transportation to comply with the bidding requirements.

(f) The Department of Transportation is required to solicit proposals under rules and regulations published by the Department of Transportation for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with highway ~~construction~~ construction, maintenance, or repair that are over ten thousand dollars ($10,000). The right to reject any and all proposals is reserved to the Board of Transportation, but the Board of Transportation may consult with the Advisory Budget Commission before awarding any such contract.

(g) The Department of Transportation may enter into contracts for research and development with educational institutions and nonprofit organizations without soliciting bids or proposals.

(h) The Department of Transportation may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. The Department of Transportation is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so.

(i) The Department of Transportation may negotiate and enter into contracts with public utility companies for the lease, purchase, installation, and maintenance of generators for electricity for its ferry repair facilities."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 461 **CHAPTER 168**

AN ACT TO AUTHORIZE THE USE OF RED LIGHTS ON VEHICLES TRANSPORTING BLOOD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-130.1(b) reads as rewritten:

"(b) The provisions of subsection (a) of this section do not apply to the following:

(1) A police car;
(2) A highway patrol car;
(3) A vehicle owned by the Wildlife Resources Commission and operated exclusively for law-enforcement purposes;
(4) An ambulance;
(5) A vehicle used by an organ procurement organization or agency for the recovery and transportation of ~~human tissues and organs~~ blood, human tissues, or organs for transplantation;
(6) A fire-fighting vehicle;
(7) A school bus;
(8) A vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary;
(9) A vehicle of a voluntary lifesaving organization (including the private vehicles of the members of such an organization) that has been officially approved by the local police authorities and which is manned or operated by members of that organization while answering an official call;
(10) A vehicle operated by medical doctors or anesthetists in emergencies;
(11) A motor vehicle used in law enforcement by the sheriff, or any salaried rural policeman in any county, regardless of whether or not the county owns the vehicle;
(11a) A vehicle operated by the State Fire Marshal or his representatives in the performance of their duties, whether or not the State owns the vehicle;
(12) A vehicle operated by any county fire marshal, assistant fire marshal, or emergency management coordinator in the performance of his duties, regardless of whether or not the county owns the vehicle;
(13) Any lights that may be prescribed by the Interstate Commerce Commission;
(14) A vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation;
(15) A vehicle operated by an emergency medical service as an emergency support vehicle; and
(16) A State emergency management vehicle."

Sec. 2. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 471 **CHAPTER 169**

AN ACT TO REPEAL LOCAL ACTS APPLICABLE TO THE CITY OF CHARLOTTE OR TO BOTH THE CITY OF CHARLOTTE AND THE COUNTY OF MECKLENBURG.

The General Assembly of North Carolina enacts:

Section 1. Chapter 362 of the 1983 Session Laws is repealed.

Sec. 2. Chapter 99 of the 1981 Session Laws is repealed.

Sec. 3. Chapter 563 of the 1973 Session Laws is repealed.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 498 **CHAPTER 170**

AN ACT TO AMEND THE CHARTER OF THE CITY OF CHARLOTTE WITH RESPECT TO THE DISPOSITION OF REAL PROPERTY TO PERSONS OF LOW OR MODERATE INCOME.

The General Assembly of North Carolina enacts:

Section 1. Section 9.22 of the Charter of the City of Charlotte being Chapter 713, Session Laws of 1965, as amended by Chapter 216, Session Laws of 1967, Chapter 92 of the Session Laws of 1983, and Chapter 343 of the Session Laws of 1985, reads as rewritten:

"Section 9.22. Real Property. The City Council shall have the power at all times to sell any real property belonging to the city after having advertised the same once a week for four (4) consecutive weeks in a newspaper published in Mecklenburg County following the procedure prescribed by the general laws of the State of North Carolina in the foreclosure of mortgages or deeds of trust under the power of sale therein contained; provided, that before any bid shall be deemed accepted or any sale made, or any title passed by virtue of said sale, such sale shall be confirmed by the City Council and said Council may, in its discretion, refuse confirmation, and when so authorized, a deed for said real estate may be executed by the Mayor and attested by the City Clerk, with the corporate seal of the city attached; provided, however, this Section shall not apply to plots in the cemetery except as to the manner of execution of the deed. In the sale of real estate, the city is authorized to execute deeds in the usual form and containing full covenants of warranty.

The City Council is hereby authorized to sell, convey, transfer, or assign any or all right, title and interest in or to real property owned by the City of Charlotte to other governmental units at private sale, when in the judgment of the City, such real property is no longer needed or suitable for the purposes of the City, or when such sale is deemed to be in the public interest.

The City may convey interests in real property owned by it by private negotiation or sale, with respect to parcels of property having a fair market value of ten thousand dollars ($10,000) or less, and Article 12 of Chapter

160A of the General Statutes shall not apply to such dispositions. The City Manager is authorized and empowered to approve such dispositions.

The City may, in addition to other authorized means, convey real property owned by it to persons of low or moderate income for residential purposes using the negotiated offer, advertisement, and upset bid process and requirements established by G.S. 160A-269, provided, however, the City may lower the bid deposit requirement to an amount not less than one percent (1%) of an offeror's bid."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 513 **CHAPTER 171**

AN ACT TO INCREASE THE MONTHLY BENEFIT FOR RETIRED CHARLOTTE FIREFIGHTERS.

The General Assembly of North Carolina enacts:

Section 1. Section 17(a) of Chapter 926 of the 1947 Session Laws, as amended, as rewritten by Chapter 830 of the 1991 Session Laws, reads as rewritten:

"(a) Effective July 1, 1986, upon retirement pursuant to the provisions of Sections 15 or 16, a Member shall receive a monthly benefit equal to two and four-tenths percent (2.4%) of his Final Average Salary multiplied by his Membership Service Credit, not to exceed one hundred percent (100%) of Final Average Salary, but not less than five hundred dollars ($500.00) per month. Effective July 1, 1989, upon retirement pursuant to the provisions of Section 15, a Member shall receive a monthly benefit equal to two and six-tenths percent (2.6%) of his Final Average Salary multiplied by his Membership Service Credit, not to exceed one hundred percent (100%) of Final Average Salary, but not less than five hundred dollars ($500.00). Effective July 1, 1995, upon retirement pursuant to the provisions of Section 15 of this act, a Member shall receive a monthly benefit equal to two and six-tenths percent (2.6%) of his Final Average Salary multiplied by his Membership Service Credit, not to exceed one hundred percent (100%) of his Final Average Salary, but not less than eight hundred thirty-three dollars and thirty-three cents ($833.33). The benefit payable pursuant to this subsection shall be referred to as the basic benefit."

Sec. 2. None of the provisions of this act shall create a liability for the Charlotte Firemen's Retirement System or for the State unless sufficient current assets are available in the Fund to pay fully for the liability. Under no circumstances shall the State incur any liability as a result of this act.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 536 CHAPTER 172

AN ACT TO PROVIDE THAT GASTON COUNTY MAY USE THE PROCEEDS OF ITS OCCUPANCY TAX ONLY FOR ECONOMIC DEVELOPMENT TO PROMOTE TRAVEL AND TOURISM.

The General Assembly of North Carolina enacts:

Section 1. Section 1(e) of Chapter 618 of the 1987 Session Laws reads as rewritten:

"(e) Use of tax revenue. Gaston County may use the proceeds of an occupancy tax levied under this section ~~for any lawful purpose.~~ only for economic development to promote travel and tourism, including administrative expenses of the county's Travel and Tourism Office. The county shall remit the gross proceeds of the tax to the Economic Development Commission, which shall administer the use of the proceeds in accordance with this subsection."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 583 CHAPTER 173

AN ACT RELATING TO THE ALAMANCE COUNTY PUBLIC LAW LIBRARY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 532 of the 1965 Session Laws and Chapter 485 of the 1969 Session Laws are repealed.

Sec. 2. The County of Alamance may establish and maintain a public law library.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 584 CHAPTER 174

AN ACT TO PROVIDE FOR THE ELECTION OF THE NINE MEMBERS OF THE ANSON COUNTY BOARD OF EDUCATION FROM SEVEN SINGLE-MEMBER DISTRICTS, PLUS TWO AT-LARGE MEMBERS ELECTED BY LIMITED VOTING.

The General Assembly of North Carolina enacts:

Section 1. For the purpose of nominating and electing members of the County Board of Education, Anson County is divided into seven districts, each of which shall nominate in partisan primaries and elect one member. These districts shall be the same as those provided for election of the Anson County Board of Commissioners by Section 2 of Chapter 281, Session Laws of 1987. The remaining two members of the Anson County Board of

Education shall be nominated and elected at large, each in the same biennium, by the limited voting methods set forth hereafter.

Sec. 2. The qualified voters of each district established by this act shall nominate candidates in partisan primaries and elect a member who resides in that district for the seat apportioned to that district, subject to the substantial plurality requirements of G.S. 163-111(a)(1). The qualified voters of Anson County shall nominate candidates and elect members who reside in Anson County for the seats apportioned to the county at large, subject to the substantial plurality requirements of G.S. 163-111(a)(2).

Sec. 3. (a) In 1995 members shall be elected from Districts 2, 4, and 5 and the two at-large districts for terms expiring in 1998. Thereafter, elections for these districts shall be quadrennially for four-year terms.

(b) In 1996 and quadrennially thereafter, members shall be elected from Districts 1, 3, 6, and 7 for four-year terms.

Sec. 4. (a) For the purpose of determining the manner of filling vacancies on the Anson County Board of Education:

(1) Leroy Lookabill or successor shall be a member at large;
(2) Weaver Thomas or successor shall be a member at large;
(3) Linda Jones or successor shall represent District 1;
(4) John Capell or successor shall represent District 2;
(5) Clayton Bennett or successor shall represent District 3;
(6) Richard Allen or successor shall represent District 4;
(7) Richard Johnson or successor shall represent District 5;
(8) Nat White, Jr., or successor shall represent District 6;
(9) M. R. Bell or successor shall represent District 7.

(b) When a vacancy occurs on any district seat, the person appointed to fill that vacancy must be a resident of that district.

Sec. 5. Members from the two at-large districts shall be nominated and elected by limited voting, to wit: each voter in the at-large primary and general election shall be entitled to vote for no more than one candidate; and the top two vote getters shall be the nominees in the primary, subject to the substantial plurality requirements of G.S. 163-111(a)(2); and the top two vote getters in the general election shall be the members elected in the general election.

Sec. 6. The provisions of Chapter 261, Session Laws of 1967, as amended, which were in effect at the time of ratification of this act and which do not conflict with this act, are not affected by this act. Upon the ratification of this act, Chapter 33 of the 1991 Session Laws and Chapter 288 of the 1989 Session Laws are repealed.

Sec. 7. The election dates, general timetable, and filing periods for the 1996 and subsequent elections authorized by this act shall be established by the Executive Secretary - Director of the State Board of Elections.

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 697 CHAPTER 175

AN ACT TO ALLOW AVERY COUNTY TO USE ITS OWN CREWS AND EQUIPMENT TO COMPLETE PHASE II OF ITS COMMUNITY RECREATION FACILITY.

Whereas, Avery County has completed Phase I of its Community Recreation Facility; and

Whereas, Phase I was structural construction, on which the county has already expended $160,000; and

Whereas, there is no similar facility in Avery County; and

Whereas, performance bonds and the separate-prime basis are driving costs to an extreme level, and project completion hinges on a reasonable cost to meet the final criteria; and

Whereas, Phase II will consist of interior and equipment, such as interior and bearing walls, plumbing fixtures, making egress handicapped accessible, completing a stage, and complete lighting and electrical equipment; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-135 reads as rewritten:

"§ *143-135. Limitation of application of Article.*

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed ~~seventy-five thousand dollars ($75,000).~~ two hundred fifty thousand dollars ($250,000). Such force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article."

Sec. 2. This act applies to Avery County only.

Sec. 3. This act applies only to the Community Recreation Facility, Phase II, and the ceiling of two hundred fifty thousand dollars ($250,000) includes any funds already expended by Avery County on Phase I.

Sec. 4. This act is effective upon ratification and expires December 31, 1997.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 713 **CHAPTER 176**

AN ACT TO PERMIT THE PERSONAL USE OF MATTHEWS POLICE CARS WITHIN SPECIFIC AREAS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-247 as made applicable to cities by G.S. 14-252 reads as rewritten:

"*§ 14-247. Private use of publicly owned vehicle.*

(a) It shall be unlawful for any officer, agent or employee of the State of North Carolina, or of any county or of any institution or agency of the State, to use for any private purpose whatsoever any motor vehicle of any type or description whatsoever belonging to the State, or to any county, or to any institution or agency of the State. It is not a private purpose to drive a permanently assigned State-owned motor vehicle between one's official work station and one's home as provided in G.S. 143-341(8)i7a.

It shall be unlawful for any person to violate a rule or regulation adopted by the Department of Administration and approved by the Governor concerning the control of all state-owned passenger motor vehicles as provided in G.S. 143-341(8)i with the intent to defraud the State of North Carolina.

(b) The governing body of a city or county may by ordinance set the geographical boundaries within which police officers may use marked police vehicles for personal use."

Sec. 2. Section 1 of this act applies to the Town of Matthews only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 788 **CHAPTER 177**

AN ACT TO INCLUDE HOSPITAL AND MEDICAL SERVICE CORPORATION PLANS UNDER THE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-62-16 reads as rewritten:

"*§ 58-62-16. Definitions.*

As used in this Article:

(1) 'Account' means any of the two accounts created under G.S. 58-62-26.

(2) 'Association' means the North Carolina Life and Health Insurance Guaranty Association created under G.S. 58-62-26.

(3) 'Board' means the board of directors of the Association established under G.S. 58-62-31.

(4) 'Contractual obligation' means any obligation under a policy or certificate under a group policy, or part thereof, for which coverage is provided under G.S. 58-62-21.

(5) 'Covered policy' means any policy within the scope of this Article under G.S. 58-62-21.

(6) 'Delinquent insurer' means an impaired insurer or an insolvent insurer; and 'delinquency' means an insurer impairment or insolvency.

(7) 'Health insurance' includes hospital or medical service corporation contracts, accident and health insurance, accident insurance, and disability insurance.

(8) 'Impaired insurer' means a member insurer that, after the effective date of this Article, is not an insolvent insurer, and (i) is deemed by the Commissioner to be potentially unable to fulfill its contractual obligations or (ii) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(9) 'Insolvent insurer' means a member insurer that, after the effective date of this Article, is placed under an order of liquidation with a finding of insolvency by a court of competent jurisdiction.

(10) 'Insurance regulator' means the official or agency of another state that is responsible for the regulation of a foreign insurer.

(11) 'Member insurer' means any insurer and any hospital or medical service corporation that is governed by Article 65 of this Chapter and that is licensed or that holds a license to transact in this State any kind of insurance for which coverage is provided under G.S. 58-62-21; and includes any insurer whose license in this State may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include an entity governed by ~~Articles 65 through~~ Article 67 of this Chapter; fraternal order or fraternal benefit society; mandatory State pooling plan; mutual assessment company or any entity that operates on an assessment basis; insurance exchange; or any entity similar to any of the foregoing.

(12) 'Moody's Corporate Bond Yield Average' means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

(13) 'Person' includes an individual, corporation, company, partnership, association, or aggregation of individuals.

(14) 'Plan' means the plan of operation established under G.S. 58-62-46.

(15) 'Policy' includes a master group contract and subscriber contract under Article 65 of this Chapter, a contract of insurance and an annuity contract.

(16) 'Premiums' means amounts received in any calendar year on covered policies less premiums, considerations, and deposits returned thereon, and less dividends and experience credits thereon. 'Premiums' does not include any amounts received for any policies or for the parts of any policies for which coverage is not provided under G.S. 58-62-21(b); except that assessable premium shall not be reduced on account of G.S. 58-62-21(c)(3) relating to interest limitations and G.S. 58-62-21(d)(2) relating to

limitations with respect to any one individual, any one participant, and any one contract holder.

(17) 'Resident' means any person who resides in this State when a member insurer is determined to be a delinquent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business. 'Resident' also means a U.S. citizen residing outside of the United States who owns a covered policy that was purchased from a member insurer while that person resided in this State.

(18) 'Unallocated annuity contract' means any annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

H.B. 993 **CHAPTER 178**

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE COMMITTEE ON APPROPRIATIONS BY ESTABLISHING THE PERCENTAGE RATES FOR THE INSURANCE REGULATORY CHARGE AND THE PUBLIC UTILITY REGULATORY FEE.

The General Assembly of North Carolina enacts:

Section 1. (a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is seven and twenty-five hundredths percent (7.25%) for the 1995 calendar year.

(b) This section is effective upon ratification.

Sec. 2. (a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is ten hundredths percent (0.10%) of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1995.

(b) This section becomes effective July 1, 1995.

Sec. 3. This act becomes effective as provided therein.

In the General Assembly read three times and ratified this the 5th day of June, 1995.

S.B. 317 **CHAPTER 179**

AN ACT TO REPEAL THE ADVISORY COMMITTEE ON HOME AND COMMUNITY CARE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-181.9A is repealed.

Sec. 2. This act becomes effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of June, 1995.

S.B. 575 CHAPTER 180

AN ACT TO INCREASE THE MEMBERSHIP OF THE LEGISLATIVE ETHICS COMMITTEE, TO DESIGNATE COMMITTEE COCHAIRS FROM EACH LEGISLATIVE CHAMBER, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-99 reads as rewritten:

"*§ 120-99. Creation; composition.*

The Legislative Ethics Committee is created to consist of ~~a chairman and eight~~ ten members, ~~four~~ five Senators appointed by the President Pro Tempore of the Senate, among them -- two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader, and ~~four~~ five members of the House of Representatives appointed by the Speaker of the House, among them -- two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader.

~~The President Pro Tempore of the Senate shall designate a member of the General Assembly as chairman of the Committee in odd-numbered years, and the Speaker of the House shall designate a member of the General Assembly as chairman of the Committee in even-numbered years. The chairman will vote only in the event of a tie vote.~~

The President Pro Tempore of the Senate and the Speaker of the House shall each designate a cochair of the Legislative Ethics Committee from the respective officer's appointees. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Legislative Ethics Committee during the odd-numbered year, and the cochair appointed by the Speaker of the House shall preside in the even-numbered year.

The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that ~~the chairman~~ both cochairs shall sign all subpoenas on behalf of the Committee."

Sec. 2. G.S. 120-100 reads as rewritten:

"*§ 120-100. Term of office; vacancies.*

~~Initial members of the Legislative Ethics Committee shall be appointed as soon as practicable after the ratification of this Article and shall serve until the expiration of their current terms as members of the General Assembly. Thereafter, appointments~~ Appointments to the Legislative Ethics Committee shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered years, and appointees shall serve until the expiration of their then-current terms as members of the General Assembly. ~~The chairman shall serve for one year and shall be appointed each year.~~ A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority making the appointment which caused the vacancy, and the person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the vacancy."

Sec. 3. G.S. 120-101 reads as rewritten:

"§ *120-101. Quorum; expenses of members.*

~~Five~~ Six members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

The ~~chairman and~~ members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties."

Sec. 4. The terms of office of the current members of the Legislative Ethics Committee shall not be affected by this act; except that the Senator appointed under the prior law as chairman is designated the cochair from the Senate and shall serve until the expiration of that Senator's current term of office as a member of the General Assembly, and the Speaker of the House shall make the additional appointment provided in this act as soon as practicable after its ratification.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of June, 1995.

S.B. 764 **CHAPTER 181**

AN ACT TO MAKE ADJUSTMENTS IN THE DEER MANAGEMENT ASSISTANCE PROGRAM OF THE WILDLIFE RESOURCES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-291.2(e) reads as rewritten:

"(e) Upon application of any landholder or agent of a landholder accompanied by a fee of fifty dollars ($50.00), the Executive Director may require a survey of the deer population on the land of such landholder. If as a result of the survey it is determined that there is an overpopulation of deer in relation to the carrying capacity of the land, that the herd is substantially dependent on such land for its food and cover, and that the imbalance in the deer population is not readily correctable by an either-sex deer season of reasonable length, the Executive Director may issue to such landholder or agent a number of special antlerless deer tags that in the judgment of the Executive Director is sufficient to correct or alleviate the population imbalance. Subject to applicable hunting license ~~requirements and bag, possession and season limits,~~ requirements, the special deer tags may be used by any person or persons selected by the landholder or his agent as authority to take antlerless deer, including male deer with 'buttons' or spikes not readily visible, on the tract of land concerned during ~~such period of time as shall be prescribed by the Executive Director beginning after November 1 and ending no later than the close of the male deer season in the locality.~~ any established deer hunting season. Each antlerless deer killed shall be affixed immediately with a special antlerless deer tag ~~in addition to the required big game tag,~~ and shall be reported immediately in the wildlife cooperator tagging book supplied with the special antlerless deer tags. This tagging book and any unused tags shall be returned to the

Commission within 15 days of the close of the season. ~~Each such~~ Antlerless deer taken under this program and tagged with the special antlerless tags provided shall not count as part of the daily bag, possession, and season limits of the person taking the deer."

Sec. 2. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 6th day of June, 1995.

S.B. 890 **CHAPTER 182**

AN ACT TO AMEND THE DEFINITION OF CARDIAC REHABILITATION PROGRAM AND TO MAKE CONFORMING CHANGES TO THE LAW GOVERNING CARDIAC REHABILITATION PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-165(b) reads as rewritten:

"(b) The purpose of this Article is to provide for the development, establishment, and enforcement of ~~basic~~ rules and certification:

(1) For the care and treatment of individuals in ~~out-of-hospital~~ outpatient cardiac rehabilitation programs; and

(2) For the maintenance and operation of cardiac rehabilitation programs to ensure safe and adequate treatment of individuals in cardiac rehabilitation programs."

Sec. 2. G.S. 131E-166(1) reads as rewritten:

"(1) 'Cardiac Rehabilitation Program' means a program certified under this Article for the delivery of cardiac rehabilitation services to ~~clients in environments other than hospitals~~ outpatients and includes, but shall not be limited to, coordinated, physician-directed, individualized programs of therapeutic activity and adaption designed to assist the cardiac patient in attaining the highest rehabilitative potential."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of June, 1995.

S.B. 1001 **CHAPTER 183**

AN ACT TO CLARIFY THE APPLICABILITY OF THE BEACH ACCESS PROGRAM TO PROJECTS DESIGNED TO PROVIDE ACCESS TO COASTAL WATERS.

The General Assembly of North Carolina enacts:

Section 1. The catch line to Part 6 of Article 7 of Chapter 113A of the General Statutes reads as rewritten:

"Part 6. ~~Coastal and Estuarine Water Beach~~ Public Beach and Coastal Waterfront Access Program."

Sec. 2. G.S. 113A-134.1 reads as rewritten:

"§ *113A-134.1. Legislative findings.*

(a) ~~It is determined and declared as a matter of legislative findings~~ The General Assembly finds that there are many privately owned lots or tracts of land in close proximity to the Atlantic Ocean and the ~~estuarine~~ coastal waters in North Carolina that have been and will be adversely affected by ~~the coastal and estuarine waters~~ hazards such as erosion, ~~flooding~~ flooding, and storm damage. The sand dunes on many of these lots provide valuable protective functions for public and private property and serve as an integral part of the beach sand supply system. Placement of permanent substantial structures on these lots will lead to increased risks of loss of life and property, increased public costs, and potential eventual encroachment of structures onto the beach.

(b) The public has traditionally fully enjoyed the State's ~~ocean and estuarine~~ beaches and coastal waters and public access to and use of the ~~beaches.~~ beaches and coastal waters. The beaches provide a recreational resource of great importance to North Carolina and its citizens and this makes a significant contribution to the economic well-being of the State. The ~~ocean and estuarine~~ General Assembly finds that the beaches and coastal waters are resources of statewide significance and have been customarily freely used and enjoyed by people throughout the State. Public access to ~~ocean and estuarine~~ beaches and coastal waters in North Carolina is, however, becoming severely limited in some areas. Also, the lack of public parking is increasingly making the use of existing public access difficult or impractical in some areas. ~~Public purposes would~~ The public interest would best be served by providing increased access to ~~ocean and estuarine beaches,~~ beaches and coastal waters and by making available additional public parking ~~facilities, or other related public uses.~~ facilities. There is therefore, a pressing need in North Carolina to establish a comprehensive program for the identification, acquisition, ~~improvement~~ improvement, and maintenance of public accessways to the ~~ocean and estuarine beaches.~~ beaches and coastal waters."

Sec. 3. G. S. 113A-134.2 reads as rewritten:

"*§ 113A-134.2. Creation of program; administration; ~~purpose.~~ purpose; definitions.*

(a) There is created the ~~Coastal and Estuarine Water Beach~~ Public Beach and Coastal Waterfront Access Program, to be administered by the ~~Coastal Resources~~ Commission and the Department, for the purpose of acquiring, ~~improving~~ improving, and maintaining property along the Atlantic Ocean and ~~estuarine waters,~~ coastal waterways to which the public has rights-of-access or public trust rights as provided in this ~~Article.~~ Part.

(b) ~~The Coastal Resources Commission and the Department shall use the definition of "estuarine water" used under this Article to administer this program.~~ As used in this Part:

(1) 'Public trust resources' has the same meaning as in G.S. 113-131(e).

(2) 'Public trust rights' has the same meaning as in G.S. 1-45.1."

Sec. 4. G. S. 113A-134.3 reads as rewritten:

"*§ 113A-134.3. Standards for ~~beach~~ public access program.*

The ~~Coastal Resource~~ Commission, with the support of the Department, shall establish and carry out a program to assure the acquisition,

~~improvement~~ improvement, and maintenance of a system of public access to ~~ocean and estuarine water beaches.~~ coastal beaches and public trust waters. This ~~beach~~ public access program shall include standards to be adopted by the Commission for the acquisition of property and the use and maintenance of ~~said~~ the property. The standards shall be written to assure that land acquisition funds shall only be used to purchase interests in property that will be of benefit to the general public. Priority shall be given to acquisition of lands ~~which,~~ that due to adverse effects of ~~coastal and estuarine water~~ natural hazards, such as past and potential erosion, ~~flooding~~ flooding, and storm damage, are unsuitable for the placement of permanent structures, including lands for which a permit for improvements has been denied under rules adopted pursuant to State law. The program shall be designed to provide and maintain reasonable public access and necessary parking, within the limitations of the resources available, to all ~~areas of the North Carolina coast and estuarine~~ coastal beaches and public trust waters where access is compatible with the natural resources involved and where reasonable access is not ~~already available as of June 30, 1981.~~ available.

(b) To the maximum extent possible, this program shall be coordinated with State and local ~~coastal and estuarine~~ beach and coastal water management and recreational programs and shall be carried out in cooperation with local governments. Prior to the purchase of any interests in property, the Secretary or his designee shall make a written finding of the public purpose to be served by the acquisition. Once property is purchased, the Department may allow property, without charge, to be controlled and operated by the county or municipality in which the property is located, subject to an agreement requiring that the local government use and maintain the property for its intended public purpose.

(c) ~~These funds~~ Subject to any restrictions imposed by law, any funds appropriated or otherwise made available to the Public Beach and Coastal Waterfront Access Program may be used to meet matching requirements for federal or other funds. The Department shall make every effort to obtain funds from sources other than the ~~general fund for these purposes.~~ General Fund to implement this program. Funds may be used to acquire or develop land for pedestrian access including parking ~~or~~ and to make grants to local governments to accomplish the purposes of this ~~Article.~~ Part. All acquisitions or dispositions of property made pursuant to this ~~Article~~ Part shall be in accordance with the provisions of Chapter 146 of the General Statutes. All grants to local governments pursuant to this ~~Article~~ Part for land acquisitions shall be made on the condition that the local government agrees to transfer title to any real property acquired with the grant funds to the State if the local government uses the property for a purpose other than beach or coastal waters access."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of June, 1995.

S.B. 1041 CHAPTER 184

AN ACT TO ESTABLISH THE MINIMUM STREAMFLOW IN THE LENGTH OF THE STREAM AFFECTED BY CERTAIN DAMS OPERATED BY SMALL HYDROELECTRIC POWER PRODUCERS AND TO PROVIDE THAT THE MINIMUM STREAMFLOWS THUS SPECIFIED ARE THE POLICY OF THE STATE FOR SUCH DAMS, WHETHER OR NOT A PARTICULAR DAM IS SUBJECT TO THE DAM SAFETY LAW OF 1967.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.31 reads as rewritten:

"§ *143-215.31. Supervision over maintenance and operation of dams.*

(a) The Commission shall have jurisdiction and supervision over the maintenance and operation of dams to safeguard life and property and to satisfy minimum streamflow requirements. The Commission may adopt standards for the maintenance and operation of dams as may be necessary for the purposes of this Part. The Commission may vary the standards applicable to various dams, giving due consideration to the minimum flow requirements of the stream, the type and location of the structure, the hazards to which it may be exposed, and the peril of life and property in the event of failure of a dam to perform its function.

(b) The Department, consistent with rules adopted by the Commission, may impose any condition or requirement in orders and written approvals issued under this Part that is necessary to ensure that stream classifications, water quality standards, and aquatic habitat requirements are met and maintained, including conditions and requirements relating to the release or discharge of designated flows from dams, the location and design of water intakes and outlets, the amount and timing of the withdrawal of water from a reservoir, and the construction of submerged weirs or other devices intended to maintain minimum streamflows.

~~(c)~~ The Commission shall adopt rules that specify the minimum streamflow in the length of the stream affected.

(c) ~~In adopting rules that specify~~ The minimum streamflow in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same ~~stream, the Commission shall establish a schedule for increasing or decreasing the minimum streamflow above or below the baseline minimum streamflow. The baseline minimum streamflow in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same stream is the~~ stream shall be:

(1) The minimum average flow for a period of seven consecutive days that would have an average occurrence of once in 10 years in the absence of the ~~dam.~~ dam, or ten percent (10%) of the average annual flow of the stream in the absence of the dam, whichever is less, if prior to 1 January 1995 the small power producer was

either licensed by the Federal Energy Regulatory Commission or held a certificate of public convenience and necessity issued by the North Carolina Utilities Commission.

(2) The minimum average flow for a period of seven consecutive days that would have an average occurrence of once in 10 years in the absence of the dam, or ten percent (10%) of the average annual flow of the stream in the absence of the dam, whichever is greater, if subdivision (1) of this subsection does not apply.

(3) To protect the habitat of the Cape Fear Shiner and other aquatic species, 28 cubic feet per second for any dam that diverts water from 2,500 feet or more of the natural streambed of any stream on which six or more dams operated by small power producers were located on 1 January 1995, notwithstanding subdivisions (1) and (2) of this subsection.

(d) Subsection (c) of this section establishes the policy of this State with respect to minimum streamflows in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same stream, whether the dam is subject to or exempt from this Part. In its comments and recommendations to the Federal Energy Regulatory Commission regarding the minimum streamflow in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same stream, the Commission and the Department shall not advocate or recommend a minimum streamflow that exceeds the minimum streamflow that would be required under subsection (c) of this section."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of June, 1995.

S.B. 259 **CHAPTER 185**

AN ACT TO ESTABLISH CIVIL LIABILITY FOR LARCENY, SHOPLIFTING, EMBEZZLEMENT, AND OBTAINING PROPERTY BY FALSE PRETENSE AND TO PROTECT MERCHANTS AND PEACE OFFICERS FROM CIVIL LIABILITY FOR DETENTION OR ARREST OF PERSONS ACCUSED OF LARCENY OR SHOPLIFTING WHILE ON STORE PREMISES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-538.2 reads as rewritten:

"*§ 1-538.2. Civil liability for ~~shoplifting and~~ larceny, shoplifting, theft by ~~employee.~~ employee, embezzlement, and obtaining property by false pretense.*

(a) Any person, other than an unemancipated minor, who commits an act that is punishable under ~~G.S. 14-72.1 or G.S. 14-72~~ G.S. 14-72, 14-72.1, 14-74, 14-90, or 14-100 is liable for civil damages to the owner of the property. In any action brought by the owner of the property he is entitled

to recover the value of the goods or merchandise, if the goods or merchandise have been destroyed, or any loss of value to the goods or merchandise, if the goods or merchandise were recovered, or the amount of any money lost by reason of the theft or embezzlement or fraud of an employee. In addition to the above, the owner of the property is entitled to recover any consequential damages, and punitive damages, together with reasonable attorneys fees. ~~If damages are assessed against the defendant, in favor of the plaintiff, the amount established for actual or consequential damages shall be trebled.~~ The total ~~of all~~ compensatory and consequential damages awarded to a plaintiff against a defendant ~~in an action~~ under this section shall not be less than one hundred fifty dollars ($150.00) and shall not exceed one thousand dollars ~~($1,000).~~ ($1,000), except an act punishable under G.S. 14-74 or G.S. 14-90 shall have no maximum limit under this section.

(b) The parent or legal guardian, having the care, custody and control of an unemancipated minor who commits an act punishable under ~~G.S. 14-72.1 or G.S. 14-72,~~ G.S. 14-72, 14-72.1, 14-74, 14-90, or 14-100, is civilly liable to the owner of the property obtained by the act if such parent or legal guardian knew or should have known of the propensity of the child to commit such an act; and had the opportunity and ability to control the child, and made no reasonable effort to correct or restrain the child. In an action brought against the parent or legal guardian by the owner, the owner is entitled to recover the amounts specified in subsection (a) except punitive damages. The total compensatory and consequential damages awarded to a plaintiff against the parent or legal guardian shall not be less than one hundred fifty dollars ($150.00) and shall not exceed one thousand dollars ($1,000).

(c) ~~A person may not be found liable under this section unless a sign was conspicuously displayed in the place of business at the time the act alleged in the action occurred stating that civil liability for shoplifting and for theft by an employee is authorized under this section.~~ An action may be brought under this section regardless of whether a criminal action is brought or a criminal conviction is obtained for the act alleged in the civil action.

(c1) For the purposes of this section, consequential damages shall include, but shall not be limited to:

(1) The salary paid to any employee for investigation, reporting, testifying, or any other time related to the investigation or prosecution for any violation under subsection (a) of this section; and

(2) Any costs, such as mileage, postage, stationery, or telephone expenses that were incurred as a result of the violation.

(c2) The owner of the property may seek payment for damages under subsections (a) and (b) of this section prior to filing a civil action, by sending the violator a demand letter. If such a letter is sent, it shall be substantially similar to the following:

'Our records show that on (date), you unlawfully took possession of property from (store name/owner of the property), located in (city, state), without the consent of (store name/owner of the property), without paying for the property, and with the intent

of converting the property to your own use. In accordance with G.S. 1-538.2, we are authorized to demand that you pay damages of one hundred fifty dollars ($150.00).

In the event you fail to comply with our demand for one hundred fifty dollars ($150.00) within 15 days from the date of your receipt of the notice, you may be held civilly liable for an amount not less than one hundred fifty dollars ($150.00) and not more than one thousand dollars ($1,000) in a civil action against you to recover the penalties and damages authorized by law, which include court costs and attorneys' fees. If you pay the one hundred fifty dollars ($150.00), (store name/owner of the property) will have no further civil remedy against you arising from the events occurring on (date).

If you are the parent or legal guardian of an unemancipated minor who unlawfully took possession of property as set out above, you can be held liable if you knew or should have known of the propensity of the child to commit the act complained of, and you had the opportunity and ability to control the child and you made no reasonable effort to correct or restrain the child.

If you believe you have received this notice in error, please contact (name) immediately.

YOU HAVE A RIGHT TO CONTEST YOUR LIABILITY IN COURT.'

(c3) The owner of the property sending the demand letter required by this section shall have qualified privilege from any civil liability resulting therefrom provided that there is no excessive publication and that the owner acted in good faith and without malice.

(c4) If the recipient of a notice pursuant to subsection (c2) of this section pays the demanded one hundred fifty dollars ($150.00) within 15 days of the recipient's receipt of the notice, the owner of the property shall have no further civil remedy against that violator for the incident described in the notice.

(d) Nothing contained in this act shall prohibit recovery upon any other theory in the law."

Sec. 2. G.S. 14-72 is amended by adding the following subsection:

"(d) Where the larceny or receiving or possession of stolen goods as described in subsection (a) of this section involves the merchandise of any store, a merchant, a merchant's agent, a merchant's employee, or a peace officer who detains or causes the arrest of any person shall not be held civilly liable for detention, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested, when such detention is upon the premises of the store or in a reasonable proximity thereto, is in a reasonable manner for a reasonable length of time, and, if in detaining or in causing the arrest of such person, the merchant, the merchant's agent, the merchant's employee, or the peace officer had, at the time of the detention or arrest, probable cause to believe that the person committed an offense under subsection (a) of this section. If the person being detained by the merchant, the merchant's agent, or the merchant's employee, is a minor under the age of 18 years, the merchant, the merchant's agent, or the

merchant's employee, shall call or notify, or make a reasonable effort to call or notify the parent or guardian of the minor, during the period of detention. A merchant, a merchant's agent, or a merchant's employee, who makes a reasonable effort to call or notify the parent or guardian of the minor shall not be held civilly liable for failing to notify the parent or guardian of the minor."

Sec. 3. G.S. 14-72.1(c) reads as rewritten:

"(c) A merchant, or the merchant's agent or employee, or a peace officer who detains or causes the arrest of any person shall not be held civilly liable for detention, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested, where such detention is upon the premises of the store or in a reasonable proximity thereto, is in a reasonable manner for a reasonable length of time, and, if in detaining or in causing the arrest of such person, the merchant, or the merchant's agent or employee, or the peace officer had at the time of the detention or arrest probable cause to believe that the person committed the offense created by this section. If the person being detained by the merchant, or the merchant's agent or employee, is a minor under the age of 18 years, the merchant or the merchant's agent or employee, shall call or notify, or make a reasonable effort to call or notify the parent or guardian of the minor, during the period of detention. A merchant, or the merchant's agent or employee, who makes a reasonable effort to call or notify the parent or guardian of the minor shall not be held civilly liable for failing to notify the parent or guardian of the minor."

Sec. 4. This act becomes effective December 1, 1995, and applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 6th day of June, 1995.

H.B. 409 **CHAPTER 186**

AN ACT TO ADD CERTAIN DRUGS TO THE CONTROLLED SUBSTANCES LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-89(a) reads as rewritten:

"(a) Any of the following opiates, including the isomers, esters, ethers, salts and salts of isomers, esters, and ethers, unless specifically excepted, or listed in another schedule, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

01. Acetyl-alpha-methylfentanyl (N[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).
1. Acetylmethadol.
1a. Repealed by Session Laws 1987, c. 412, s. 2.
1b. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
2. Allylprodine.
3. Alphacetylmethadol.
4. Alphameprodine.

5. Alphamethadol.
5a. Alpha-methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionalilide; 1(1-methyl-2-phenyl-ethyl)-4-(N-propanilido) piperidine).
6. Benzethidine.
7. Betacetylmethadol.
7a. Beta-hydroxfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).
7b. Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).
8. Betameprodine.
9. Betamethadol.
10. Betaprodine.
11. Clonitazene.
12. Dextromoramide.
13. Diampromide.
14. Diethylthiambutene.
15. Difenoxin.
16. Dimenoxadol.
17. Dimepheptanol.
18. Dimethylthiambutene.
19. Dioxaphetyl butyrate.
20. Dipipanone.
21. Ethylmethylthiambutene.
22. Etonitazene.
23. Etoxeridine.
24. Furethidine.
25. Hydroxypethidine.
26. Ketobemidone.
27. Levomoramide.
28. Levophenacylmorphan.
28a. 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP).
28b. 3-Methylfentanyl (N-[3-methyl-1-(2-Phenylethyl)-4-Piperidyl]-N-Phenylpropanamide).
28c. 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
29. Morpheridine.
30. Noracymethadol.
31. Norlevorphanol.
32. Normethadone.
33. Norpipanone.
33a. Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide.
34. Phenadoxone.
35. Phenampromide.
35a. 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP).
36. Phenomorphan.
37. Phenoperidine.

38. Piritramide.
39. Proheptazine.
40. Properidine.
41. Propiram.
42. Racemoramide.
42a. Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide.
42b. Tilidine.
43. Trimeperidine."

Sec. 2. G.S. 90-89(c) reads as rewritten:

"(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. 3, 4-methylenedioxyamphetamine.
2. 5-methoxy-3, 4-methylenedioxyamphetamine.
2a. 3, 4-Methylenedioxymethamphetamine (MDMA).
2b. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4-(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA).
2c. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine, and N-hydroxy MDA).
3. 3, 4, 5-trimethoxyamphetamine.
3a. Alpha-ethyltryptamine. Some trade or other names: etryptamine, Monase, alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET.
4. Bufotenine.
5. Diethyltryptamine.
6. Dimethyltryptamine.
7. 4-methyl-2, 5-dimethoxyamphetamine.
8. Ibogaine.
9. Lysergic acid diethylamide.
10. Mescaline.
11. Peyote, meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seed or extracts.
12. N-ethyl-3-piperidyl benzilate.
13. N-methyl-3-piperidyl benzilate.
14. Psilocybin.
15. Psilocyn.
16. 2, 5-dimethoxyamphetamine.
16a. 2, 5-dimethoxy-4-ethylamphetamine. Some trade or other names: DOET.
17. 4-bromo-2, 5-dimethoxyamphetamine.
18. 4-methoxyamphetamine.

19. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.
20. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.
21. Thiophene analog of phencyclidine. Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP.
21a. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine; Some other names: TCPy.
22. Parahexyl."

Sec. 3. G.S. 90-89(e) reads as rewritten:

"(e) Stimulants. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having as stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

1. Aminorex. Some trade or other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenly-2-oxazolamine.
~~01.~~ 2. Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.
~~1.~~ 3. Fenethylline.
4. Methcathinone. Some trade or other names: 2-(methylamino)-propiophenone, alpha-(methylamino)propiophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylproprion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432.
~~1a.~~ 5. (+/-)cis-4-methylaminorex [(+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine] (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline).
~~1b.~~ 6. ~~N,N-dimethylamphetamine [Some other names: N,N,alpha-trimethylbenzeneethaneamine; N,N,alpha-trimethylphenethylamine].~~ N,N-dimethylamphetamine. Some other names: N,N,alpha-trimethylbenzeneethaneamine; N,N,alpha-trimethylphenethylamine.
~~2.~~ 7. N-ethylamphetamine."

Sec. 4. G.S. 90-90(b) reads as rewritten:

"(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation unless specifically exempted or listed in other schedules:

01. Alfentanil.
1. Alphaprodine.
2. Anileridine.
3. Bezitramide.
3a. Carfentanil.

4. Dihydrocodeine.
5. Diphenoxylate.
6. Fentanyl.
7. Isomethadone.
7a. Levo-alphacetylmethadol. Some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM.
8. Levomethorphan.
9. Levorphanol.
10. Metazocine.
11. Methadone.
12. Methadone -- Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
13. Moramide -- Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid.
14. Pethidine.
15. Pethidine -- Intermediate -- A, 4-cyano-1-methyl-4-phenylpiperidine.
16. Pethidine -- Intermediate -- B, ethyl-4-phenylpiperidine-4-carboxylate.
17. Pethidine -- Intermediate -- C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
18. Phenazocine.
19. Piminodine.
20. Racemethorphan.
21. Racemorphan.
22. Sufentanil."

Sec. 5. This act becomes effective 1 October 1995.

In the General Assembly read three times and ratified this the 6th day of June, 1995.

H.B. 643 **CHAPTER 187**

AN ACT TO REDEFINE THE BOUNDARIES OF THE HEARTSEASE FIRE TAX DISTRICT AND THE HARRISON FIRE TAX DISTRICT IN EDGECOMBE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The boundaries of the Heartsease Fire Tax District in Edgecombe County are as follows:

HEARTSEASE FIRE TAX DISTRICT

BEGINNING at point (1) on N. C. Highway 97, 1.0 miles east of its intersection with S.R. 1404 (New Hope Church Road) and said beginning point also being in the common boundary of Heartsease Volunteer Fire Department Fire Tax District and the Leggett Volunteer Fire Department Fire Tax District and thence running southwesterly with the line of the existing Leggett Volunteer Fire Department Fire Tax District and following the Tar River to point (2) where the Tar River intersects with the Town of Tarboro Corporate Limits; thence running Southwesterly with the Town of Tarboro Corporate Limits to point (3) at the intersection of U.S. Highway

64 Alternate and N.C. Highway 33; thence running along and with the Town of Tarboro Corporate Limits westerly to point (4) on U.S. Highway 64 Alternate 1.1 miles west of its intersection with S.R. 1207 (McNair Road); thence running southerly along and with the Town of Tarboro Corporate Limits and line of the Princeville Volunteer Fire Department Fire Tax District to point (5) at the intersection of S.R. 1207 (McNair Road) and S.R. 1208 (Howard Avenue Extension); thence running in a westerly direction following the centerline of S.R. 1208 (Howard Avenue Extension) and along the line of the Princeville Volunteer Fire Department Fire Tax District to point (6) on S.R. 1208 (Howard Avenue Extension), 0.3 miles southwest of its intersection with S.R. 1225 (Kingsboro Road); thence continuing with the line of the Princeville Volunteer Fire Department Fire Tax District northwesterly to point (7) on S.R. 1223 (Antioch Road), a point which is 1.3 miles southwest of its intersection with S.R. 1225 (Kingsboro Road) and also being a point in the line of the West Edgecombe Volunteer Fire Department Fire Tax District; thence running northwesterly with the line of the West Edgecombe Volunteer Fire Department Fire Tax District to point (8), on S.R. 1226 (Melton Road), 0.7 miles south of its intersection with U. S. Highway 64 Alternate; thence continuing with the line of the West Edgecombe Volunteer Fire Department Fire Tax District in a southwesterly direction to point (9) on U. S. Highway 64 Alternate, 0.4 miles west of its intersection with S.R. 1226 (Melton Road); thence running in a northerly direction continuing with the line of the West Edgecombe Volunteer Fire Department Fire Tax District to and with Tar River to point (10) on N. C. Highway 97, 0.2 miles northwest with its intersection with Leggett Road and also being in the line of the Battleboro Volunteer Fire Department Harrison Fire Tax District; thence running northeasterly along and with the line of the Battleboro Volunteer Fire Department Harrison Fire Tax District to point 11 on S.R. 1407 (Battleboro-Leggett Road), 1.2 miles northwest of its intersection with S.R. 1408 (New Hope Church Road); thence continuing with the Battleboro Volunteer Fire Department Harrison Fire Tax District northerly and southerly to the line of the Leggett Volunteer Fire Department Fire Tax District and along the Leggett Volunteer Fire Department Fire Tax District line to point (12) of S.R. 1407 (Battleboro-Leggett Road), 0.4 miles southeast of its intersection with S.R. 1208 (New Hope Church Road) and thence continuing along and with the Leggett Volunteer Fire Department Fire Tax District southeasterly to point (1) the point of beginning, all as the same appears on a map on file in the Office of the Emergency Services Coordinator of Edgecombe County in the Edgecombe County Administrative Offices at 201 St. Andrews Street in Tarboro, North Carolina and which has been signed and dated by the Edgecombe County Emergency Services Coordinator, the Chief of the Heartsease Volunteer Fire Department and the President of the Edgecombe County Association of Volunteer Fire Departments.

Sec. 2. The boundaries of the Harrison Fire Tax District in Edgecombe County are as follows:

HARRISON FIRE TAX DISTRICT
EDGECOMBE COUNTY

BEGINNING at point (1) at the common intersection of the Edgecombe County line, the centerline of the CSX Railroad and the Davenport Volunteer Fire Department Fire Tax District which intersection is 1.5 miles along the CSX Railroad north from the corporate limits of Battleboro; thence running in a southeasterly direction along and with the Davenport Volunteer Fire Department Fire Tax District line to point (2), on S.R. 1404 (Seven Bridges Road) 0.1 mile northeast of its intersection with S.R. 1411 (Marriott Road); thence continuing with the line of the Davenport Volunteer Fire Department Fire Tax District line in a southeasterly direction 2.4 miles to point (3) at its intersection with the Leggett Volunteer Fire Department Fire Tax District line; thence running in a southerly direction along and with the Leggett Volunteer Fire Department Tax District line to its intersection with the Heartsease Volunteer Fire Department Fire Tax District line; and thence running along and with the Heartsease Volunteer Fire Department Fire Tax District line in a northeasterly direction and southerly direction to point (4), on S.R. 1407 (Battleboro-Leggett Road), 0.6 miles west of its intersection with S.R. 1415 (Morningstar Church Road); thence continuing with the line of Heartsease Volunteer Fire Department Fire Tax District in a southeasterly direction to point (5), on N.C. Highway 97, 0.2 miles south of its intersection with S.R. 1406 (Coolspring Road), thence continuing with the line of the Heartsease Volunteer Fire Department Fire Tax District line in a southeasterly direction to Tar River, a corner with the Heartsease Volunteer Fire Department Fire Tax District line and the West Edgecombe Volunteer Fire Department Fire Tax District line and then continuing with the Tar River and the West Edgecombe Volunteer Fire Tax District line in and to its intersection with the corporate limits of the City of Rocky Mount; and thence running northeasterly and following the corporate limits of the City of Rocky Mount, the Edgecombe County and Nash County lines and CSX Railroad to point (1), the beginning point, all as shown on a map on file in the Office of the Emergency Services Coordinator of Edgecombe County in the Edgecombe County Administrative Offices at 201 St. Andrews Street in Tarboro, North Carolina and which has been signed and dated by the Edgecombe County Emergency Services Coordinator, the Chief of the Battleboro Volunteer Fire Department and the President of the Edgecombe County Association of Volunteer Fire Departments.

Sec. 3. This act becomes effective June 30, 1995.

In the General Assembly read three times and ratified this the 6th day of June, 1995.

H.B. 829 **CHAPTER 188**

AN ACT TO AMEND THE VARIOUS GROUNDS FOR DISCIPLINE OF PRACTITIONERS OF CHIROPRACTIC BY THE STATE BOARD OF CHIROPRACTIC EXAMINERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-154(b) reads as rewritten:

"(b) ~~The~~ Any one of the following ~~are~~ is grounds for disciplinary action by the Board under subsection (a):

(1) Advertising services in a false or misleading ~~manner;~~ manner.

(2) Conviction of a felony or of a crime involving moral ~~turpitude;~~ turpitude.

(3) Addiction to or severe dependency upon alcohol or any other ~~drugs which endangers the public by impairing a chiropractor's ability to practice safely;~~ drug that impairs the ability to practice safely.

(4) Unethical conduct ~~in the practice of the profession~~ as defined in G.S. 90-154.2.

(5) ~~Negligence or incompetence in the practice of chiropractic;~~ Negligence, incompetence, or malpractice in the practice of chiropractic.

~~(6) Committing an act or acts constituting malpractice in the practice of chiropractic;~~

(7) Not rendering acceptable care in the practice of the profession as defined in G.S. 90-154.3.

(8) ~~Engaging in a course of lewd~~ Lewd or immoral conduct ~~in connection with the delivery of chiropractic services to a patient;~~ toward a patient.

(9) ~~Committing a fraudulent act or acts or engaging in fraudulent conduct in connection with the delivery of or charging for chiropractic services;~~ Committing or attempting to commit fraud, deception, or misrepresentation.

(10) ~~Offering to accept or accepting payment for services rendered by assignment from any third party payor after offering to accept or accepting whatever the third party payor covers as payment in full, if the effect of the offering or acceptance is to eliminate or give the impression of eliminating the need of payment by an insured of any required deductions applicable in the insured's policy;~~ Offering to waive a patient's obligation to pay any deductible or copayment required by the patient's insurer.

(11) ~~Submitting to any third payor a claim for a service or treatment without also providing upon request a copy of the claim to the insured;~~ Failing to honor promptly a patient's request for a copy of any claim form submitted to the patient's insurer.

(12) ~~Reducing or offering to reduce, rebating or offering to rebate, discounting or offering to discount to an insured any payment, by the insured's third party payor to the licensee, for services or treatments rendered under the insured's policy;~~ Rebating or offering to rebate to a patient any portion of the funds received from the patient's insurer, unless the sum rebated constitutes the refund of an overpayment to which the patient is lawfully entitled.

(13) ~~Advertising any reduced or discounted fees for services or treatments or advertising any free services or treatments without prominently stating in the advertisement the licensee's usual fee for the service or treatment which is the subject of the discount, rebate, or free offering;~~ Advertising any free or reduced rate service without prominently stating in the advertisement the usual fee for that service.

~~(14) Submitting to any third party payor a claim for a service or treatment at a greater or an inflated fee or charge than the usual fee the licensee charges for that service or treatment when the service or treatment is rendered without third party reimbursement;~~ Charging an insurer or other third-party payor a fee greater than a patient would be charged for the same service if the patient were paying directly.

~~(15) Advertising a fee or charge for a service or treatment which is different from the fee or charge the licensee submits to third party payors for that service or treatment;~~ Charging an insurer or other third-party payor a fee greater than the advertised fee for the same service.

(16) Violating the provisions of G.S. 90-154.1.

(17) Physical, mental, or emotional infirmity of such severity as to impair the ability to practice safely.

(18) Violating the provisions of G.S. 90-151 regarding the extent and limitation of license.

(19) Concealing information from the Board or failing to respond truthfully and completely to an inquiry from the Board concerning any matter affecting licensure.

(20) Failing to comply with a decision of the Board that is final."

Sec. 2. G.S. 90-154.1 reads as rewritten:

"*§ 90-154.1. Collection of certain fees prohibited.*

(a) Any patient or any other person responsible for payment has the right to refuse to pay, cancel payment, or be reimbursed for payment for any service, examination, or treatment other than the advertised reduced rate service, examination or treatment which is performed as a result of and within 72 hours of responding to any advertisement for a free or reduced rate service, free or reduced rate examination, or free or reduced rate treatment. Any further treatment shall be agreed upon in writing and signed by both parties.

(b) ~~In any written advertisement for a free or reduced rate service, free or reduced rate examination, or free or reduced rate treatment by a chiropractor, the language of subsection (a) shall appear in capital letters clearly distinguishable from the rest of the text and any further treatment shall be agreed upon in writing and signed by both parties.~~

Any chiropractic advertisement that offers a free or reduced rate service, examination or treatment shall contain the following notice to prospective patients: 'If you decide to purchase additional treatment, you have the legal right to change your mind within three days and receive a refund.' If the advertisement is published in print, the foregoing notice shall appear in capital letters clearly distinguishable from the rest of the text. If the advertisement is broadcast on radio or television, the foregoing notice shall be recited at the end of the advertisement.

~~(c) In any broadcast advertisement for a free or reduced rate service, free or reduced rate examination, or free or reduced rate treatment by a chiropractor, the following shall be read at the end of the advertisement: "By law, any person who responds to this advertisement for a free or reduced rate service, examination or treatment and is billed for any service,~~

~~examination, or treatment other than the advertised reduced rate service during the responding visit may refuse to pay, cancel payment, or be reimbursed for any payment made for the billed service, examination, or treatment.~~

(d) Any bill sent to a patient or any other person responsible for payment as a result of the patient responding to a chiropractic advertisement shall clearly contain the language of the first sentence of subsection (a) and have distinguished ~~such~~ on its face the charge for the reduced rate services, including an itemization of free services, and the separate charge for any services, examinations or treatments other than the advertised free or reduced rate services, examinations, or treatments. The reduced rate charges shall be labeled 'Free or Reduced Rate Charges' and any other charges shall be labeled 'Non-advertised Services, Examinations, or Treatments'."

Sec. 3. G.S. 90-154.3 reads as rewritten:

"*§ 90-154.3. Acceptable ~~practice.~~ care in the practice of chiropractic.*

~~Acceptable care in the practice of chiropractic shall include:~~

~~(1) The usual and customary methods as taught in recognized chiropractic colleges for:~~

(a) It shall be unlawful for a doctor of chiropractic to examine, treat, or render any professional service to a patient that does not conform to the standards of acceptable care.

(b) For purposes of disciplinary action, the Board of Chiropractic Examiners may adopt rules that establish and define standards of acceptable care with respect to:

~~a.~~(1) Examination and diagnosis;

~~b.~~(2) The use of chiropractic adjustive procedures;

~~c.~~(3) Physiological therapeutic agents;

~~d.~~(4) Diagnostic radiology; ~~and~~

~~e.~~(5) The maintenance of patient ~~records~~ records; and ~~sufficent to substantiate the patient's progress in the reestablishment and promotion of health in a hygenic manner.~~

~~(2) The maintenance of the office, premeises and equipment in a clean, sanitary, safe, and adequate condition.~~

(6) Sanitation, safety, and the adequacy of clinical equipment.

~~Any and all care rendered which is not in accordance with the foregoing is unacceptable care.~~

(c) If the Board has not defined a standard of acceptable care by rule, then the standard of acceptable care shall be the usual and customary method as taught in the majority of recognized chiropractic colleges.

(d) Nothing in this section shall ~~be deemed to~~ alter the lawful scope of practice of chiropractic as defined in G.S. ~~90-143.~~ 90-143 or the limitation of license as defined in G.S. 90-151."

Sec. 4. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 6th day of June, 1995.

H.B. 615 CHAPTER 189

AN ACT TO REDEFINE THE CORPORATE LIMITS OF THE TOWN OF STANFIELD.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 1210 of the 1955 Session Laws is rewritten to read:

"Sec. 2. The corporate limits of the Town of Stanfield are as follows: BEGINNING AT A POINT in the centerline of NC 200 at the Stanfield/Locust corporate limits; thence, westerly 230 feet along the Stanfield/Locust limits to the southwest corner of Parcel 7403 (Map 5574.01); thence meandering northerly, westerly, and southerly 9,880 feet along the Stanfield/Locust corporate limits to the west right-of-way line of Renee Ford Road (SR 1140); thence, southerly 250 feet along Renee Ford Road to an intersection with the north line of Parcel 5729 (Map 5564.02); thence, westerly 3650 feet along the north line of Parcel 5729 to a corner; thence, southerly 1260 feet along the west lines of Parcel 5729 and Parcel 8012 (Map 5564) to a corner of Parcel 8012; thence, westerly, 530 feet along the north line of Parcel 8012 and across Browns Hill Road to the west right-of-way line of Browns Hill Road; thence southerly 200 feet along Browns Hill Road to intersection with the north line of Parcel 4460 (Map 5564); thence, westerly 980 feet along the north property line of Parcel 4460 to a corner with Parcel 3919 (Map 5564); thence, northerly and westerly 1600 feet along the east and north property lines of Parcel 3919 to the Stanly County line; thence, southerly along the Stanly County line 1900 feet to the north right-of-way line of Pine Bluff Road; thence, southerly 80 feet along Pine Bluff Road to a corner of Parcel 4306 (Map 5564); thence, southeasterly and northeasterly along the south and east property lines of Parcel 4306, 1310 feet, to a corner with Parcel 8638 (Map 5564); thence, southeasterly 2680 feet along the west and south property lines of Parcels 8638 and 5732 (Map 5564) to the north right-of-way line of the Norfolk and Southern Railroad; thence, easterly 950 feet along the Norfolk and Southern Railway to a corner with Parcel 5732; thence, northerly 1400 feet along the east property line of Parcel 5732 to the south right-of-way line of Nance Road; thence, easterly 2200 feet along Nance Road to the west property line of Parcel 1276 (Map 5564.04); thence, southerly 380 feet along the west line of Parcel 1276 to a corner; thence, easterly 400 feet along the south line of Parcel 1276 to a corner; thence, northerly 360 feet along the east property line and across Nance Road to the north right-of-way line of Nance Road; thence, easterly 110 feet along Nance Road to a corner with Parcel 7466 (Map 5564.04); thence, northerly 370 feet along the east property line of Parcel 7466 to a corner with Parcel 8137 (Map 5564.04); thence, easterly 450 feet along the south property line of Parcel 8137 to a corner with the west right-of-way line of Renee Ford Road; thence, southwesterly 1550 feet along Renee Ford Road to the Norfolk & Southern Railroad; thence, southeasterly 4600 feet along the Norfolk & Southern to a point; thence, easterly 1200 feet along the south line of parcel 2682 (map 5574.03) to the present corporate limits of Stanfield at the East Branch of Black Hole

Creek; thence, southerly 1800 feet along Black Hole Creek and the present Stanfield corporate limits to River Road (SR1145); thence, southwesterly 2200 feet across River Road and following the west property line of Parcel 6723 (Map 5573.01) and extended along the east line of Parcel 3670 (Map 5563) to the southeast corner of Parcel 3670; thence, westerly 580 feet along the south property line of 3670 to a corner; thence, southerly 530 feet along the west property line of Parcel 3499 (Maps 5563 and 5573) to Polk Ford Road (SR 1147); thence, southeasterly 150 feet to intersection of Polk Ford Road and Smith Road (SR 1148); thence, southerly 550 feet along Smith Road to the southwest corner of Parcel 0310 (Map 5563); thence, easterly 2400 feet along the south property lines of Parcels 0310, 4118, and 3499 (Maps 5563 and 5573) to a point in the west property line of Parcel 2691 (Map 5573.01); thence, southerly 1700 feet along the western property lines of Parcels 2691, 9795 (Map 5573.01), 9388 (Map 5573), and 0906 (Map 5573) to the southwest corner of Parcel 0906; thence, easterly, 2100 feet along the south lines of Parcels 0906 and 0034 (Map 5573) and across Love Mill Road to the southeast corner of Parcel 0034 at Rock Hole Creek, East Branch; thence, northerly 4400 feet along Black Hole Creek to the southwest corner of Parcel 7927 (Map 5573.01); thence, easterly 650 feet along the south property line of Parcel 7927 to a corner with the west property line of Parcel 6619 (Map 5573.02) thence, northerly and easterly 1050 feet along the property lines of Parcel 6619 to a corner with Parcel 7165 (Map 5573.02); thence, northerly and easterly 392 feet along the west and north property lines of Parcel 7165 to Sunset Lake Road (SR 1126); thence, northerly 2750 feet along Sunset Lake Road and across NC 200 to the west corner of Parcel 5996 Map 5574.04) in the east right-of-way of NC 200; thence, northeasterly 2000 feet along the northwest property lines of Parcel 5996 and Parcel 9355 Map 5574.04) to a corner with the Norfolk and Southern Railroad; thence, easterly 1600 feet to the southeast corner of Parcel 5766 (Map 5574.04); thence, northerly 2550 feet along the east property line of Parcel 5766 to Big Lick Road (SR 1130); thence, northwesterly 1400 feet along Big Lick Road to intersection with Elm Street (SR 1137); thence, northerly 2750 feet along Elm Street to the northeast corner of Parcel 7894 (Map 5574.02); thence, southwesterly 200 feet to a point in the north property line of Parcel 7894; thence, northwesterly 1600 feet along the northeast property lines of Parcels 3937 and 6412 Map 5574.02) to a corner; thence, southerly 320 feet along the west line of Parcel 6412 to a corner; thence, northwesterly 1300 feet along the northeast property line of Parcel 8787 to intersection with Stanfield/Locust Corporate Limit line; thence, meandering 2920 feet along the Stanfield/Locust Corporate Limit line to the POINT OF BEGINNING."

Sec. 2. This act becomes effective June 30, 1995.

In the General Assembly read three times and ratified this the 6th day of June, 1995.

S.B. 83 CHAPTER 190

AN ACT TO ENACT THE UNIFORM STATUTORY RULE AGAINST PERPETUITIES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 41 of the General Statutes is amended by designating the existing provisions as Article 1, "Survivorship Rights and Future Interests", and by adding a new Article to read:

"ARTICLE 2.

"Uniform Statutory Rule Against Perpetuities.

"§ *41-15. Statutory rule against perpetuities.*

(a) A nonvested property interest is invalid unless:

(1) When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(2) The interest either vests or terminates within 90 years after its creation.

(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(1) When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

(2) The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(1) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(2) The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subdivision (a)(1), (b)(1), or (c)(1) of this section, the possibility that a child will be born to an individual after the individual's death is disregarded.

(e) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument:

(1) Seeks to disallow the vesting or termination of any interest or trust beyond,

(2) Seeks to postpone the vesting or termination of any interest or trust until, or

(3) Seeks to operate in effect in any similar fashion upon,

the later of (i) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (ii) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that

language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

"*§ 41-16. When nonvested property interest or power of appointment created.*

(a) Except as provided in subsections (b) and (c) of this section and in G.S. 41-19(a), the time for creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For purposes of this Article, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (i) a nonvested property interest or (ii) a property interest subject to a power of appointment described in G.S. 41-15(b) or (c), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(c) For purposes of this Article, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

"*§ 41-17. Reformation.*

Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 90 years allowed by G.S. 41-15(a)(2), 41-15(b)(2), or 41-15(c)(2) if:

(1) A nonvested property interest or a power of appointment becomes invalid under G.S. 41-15;

(2) A class gift is not invalid under G.S. 41-15, but might become invalid under G.S. 41-15, and the time has arrived when the share of any class is to take effect in possession or enjoyment; or

(3) A nonvested property interest that is not validated by G.S. 41-15(a)(1) can vest but not within 90 years after its creation.

"*§ 41-18. Exclusions from statutory rule against perpetuities.*

G.S. 41-15 does not apply to:

(1) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:
   a. A premarital or postmarital agreement;
   b. A separation or divorce settlement;
   c. A spouse's election;
   d. A similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;
   e. A contract to make or not to revoke a will or trust;
   f. A contract to exercise or not to exercise a power of appointment;
   g. A transfer in satisfaction of a duty of support; or
   h. A reciprocal transfer;

(2) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or

mortgage property, and the power of a fiduciary to determine principal and income;

(3) A power to appoint a fiduciary;

(4) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(6) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(7) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this State.

"*§ 41-19. Prospective application.*

(a) Except as extended by subsection (b) of this section, this Article applies to a nonvested property interest or a power of appointment that is created on or after October 1, 1995. For purposes of this section, a nonvested property interest or a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) If a nonvested property interest or a power of appointment was created prior to October 1, 1995, and is determined in a judicial proceeding, commenced on or after October 1, 1995, to violate this State's rule against perpetuities as that rule existed before October 1, 1995, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

"*§ 41-20. Short title.*

This Article may be cited as the Uniform Statutory Rule Against Perpetuities.

"*§ 41-21. Uniformity of application and construction.*

This Article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Article among states enacting it.

"*§ 41-22. Supersession.*

This Article supersedes the rule of the common law known as the rule against perpetuities."

Sec. 2. In the event that the 1995 General Assembly enacts a new Article of Chapter 36A of the General Statutes, entitled "Honorary Trusts; Trusts for Pets; Trusts for Cemetery Lots", G.S. 41-18, as enacted by this act, is amended by adding a new subdivision to read:

"(8) A property interest or arrangement subjected to a time limit under Article 14 of Chapter 36A, 'Honorary Trusts; Trusts for Pets; Trusts for Cemetery Lots'."

The Revisor of Statutes shall relocate the disjunctive "or" and shall correct punctuation as appropriate in the event that G.S. 41-18 is amended as provided in this section.

Sec. 3. In the event that the 1995 General Assembly enacts a new Article of Chapter 41 of the General Statutes, entitled "Time Limits on Options in Gross and Certain Other Interests in Land", G.S. 41-18, as enacted by this act, is amended by adding a new subdivision to read:

"(9) A property interest or arrangement subjected to a time limit under Article 3 of this Chapter, 'Time Limits on Options in Gross and Certain Other Interests in Land'."

The Revisor of Statutes shall relocate the disjunctive "or" and shall correct punctuation as appropriate in the event that G.S. 41-18 is amended as provided in this section.

Sec. 4. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Commentary to the Uniform Statutory Rule Against Perpetuities Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

Sec. 5. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 7th day of June, 1995.

S.B. 154 **CHAPTER 191**

AN ACT TO INCREASE THE MINIMUM PROPERTY DAMAGE AMOUNT FOR A REPORTABLE MOTOR VEHICLE ACCIDENT AND TO RESOLVE INCONSISTENCIES IN THE LAW CONCERNING ACCIDENT REPORTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(33b) Reportable Accident. -- An accident or collision involving a motor vehicle that results in either of the following:

a. Death or injury of a human being.

b. Total property damage of one thousand dollars ($1,000) or more."

Sec. 2. G.S. 20-166.1 reads as rewritten:

"*§ 20-166.1. Reports and investigations required in event of ~~collision.~~ accident.*

(a) Notice of Accident. -- The driver of a vehicle involved in a ~~collision resulting in injury to or death of any person or total property damage to an apparent extent of five hundred dollars ($500.00) or more shall~~ reportable

accident must immediately, by the quickest means of communication, ~~give notice of~~ notify the ~~collision to the local police department if the collision occurs within a municipality, or to the office of the sheriff or other qualified rural police of the county wherein the collision occurred.~~ appropriate law enforcement agency of the accident. If the accident occurred in a city or town, the appropriate agency is the police department of the city or town. If the accident occurred outside a city or town, the appropriate agency is the State Highway Patrol or the sheriff's office or other qualified rural police of the county where the accident occurred.

(b) Insurance Verification. -- ~~The~~ When requested to do so by the Division, the driver of ~~any~~ a vehicle involved in a ~~collision resulting in injury to or death of any person or total property damage to an apparent extent of five hundred dollars ($500.00) or more shall~~ reportable accident must furnish proof of financial ~~responsibility on forms prescribed by the Division.~~ responsibility.

(c) Parked Vehicle. -- ~~Notwithstanding any other provisions of this section, the~~ The driver of ~~any~~ a motor vehicle ~~which~~ that collides with another motor vehicle left parked or unattended on ~~any street or~~ a highway of this State ~~shall within 48 hours~~ must report the collision to the owner of ~~such~~ the parked or unattended motor vehicle. ~~Such report shall~~ This requirement applies to an accident that is not a reportable accident as well as to one that is a reportable accident. The report may be made orally or in writing, must be made within 48 hours of the accident, and must include the ~~time, date and place of the collision, the driver's name, address, driver's license number and the~~ following:

(1) The time, date, and place of the accident.
(2) The driver's name, address, and drivers license number.
(3) The registration plate number of the vehicle being operated by the driver at the time of the ~~collision, and such report may be oral or in writing. Such written report must be transmitted to the current address of the owner of the parked or unattended vehicle by United States~~ accident.

If the driver makes a written report to the owner of the parked or unattended vehicle and the report is not given to the owner at the scene of the accident, the report must be sent to the owner by certified mail, return receipt requested, and a copy of ~~such report shall be transmitted to the North Carolina Division of Motor Vehicles.~~ the report must be sent to the Division.

~~No report, oral or written, made pursuant to this Article shall be competent in any civil action except to establish identity of the person operating the moving vehicle at the time of the collision referred to therein.~~

~~Any person who violates this subsection is guilty of a Class 1 misdemeanor.~~

~~(d) The Division may require the driver of a vehicle involved in a collision which is required to be reported by this section to file a supplemental report when the original report is insufficient in the opinion of the Division.~~

(e) Investigation by Officer. -- ~~It shall be the duty of the State Highway Patrol or the sheriff's office or other qualified rural police to investigate all~~

~~collisions required to be reported by this section when the collisions occur outside the corporate limits of a city or town; and it shall be the duty of the police department of each city or town to investigate all collisions required to be reported by this section when the collisions occur within the corporate limits of the city or town. Every~~ The appropriate law enforcement agency must investigate a reportable accident. A law-enforcement officer who investigates ~~a collision as required by this subsection,~~ a reportable accident, whether ~~the investigation is made~~ at the scene of the ~~collision~~ accident or by subsequent investigations and interviews, ~~shall, within 24 hours after completing the investigation, forward a written report of the collision to the Division if the collision occurred outside the corporate limits of a city or town, or to the police department of the city or town if the collision occurred within the corporate limits of such city or town. Police departments should forward such reports to the Division within 10 days of the date of the collision. Provided, when a collision occurring outside the corporate limits of a city or town is investigated by a duly qualified law-enforcement officer other than a member of the State Highway Patrol, as permitted by this section, such other officer shall forward a written report of the collision to the office of the sheriff or rural police of the county wherein the collision occurred and the office of the sheriff or rural police shall forward such reports to the Division within 10 days of the date of the collision. The reports by law-enforcement officers shall be in addition to, and not in place of, the reports required of drivers by this section.~~ must make a written report of the accident within 24 hours of the accident and must forward it as required by this subsection. The report must contain information on financial responsibility for the vehicle driven by the person whom the officer identified as at fault for the accident.

If the officer writing the report is a member of the State Highway Patrol, the officer must forward the report to the Division. If the officer is not a member of the State Highway Patrol, the officer must forward the report to the local law enforcement agency for the area where the accident occurred. A local law enforcement agency that receives an accident report must forward it to the Division within 10 days after receiving the report.

When ~~any~~ a person ~~involved~~ injured in ~~an automobile collision shall die~~ a reportable accident dies as a result of ~~said collision within a period of~~ the accident within 12 months ~~following said collision, and such~~ after the accident and the death ~~shall not have been~~ was not reported in the original report, ~~it shall be the duty of investigating enforcement officers to~~ the law enforcement officer investigating the accident must file a supplemental report ~~setting forth the death of such person,~~ that includes the death.

(f) Medical Personnel. -- ~~Every person holding the office of~~ A county medical examiner ~~in this State shall~~ must report to the Division the death of any person ~~as a result of a collision involving a motor vehicle~~ in a reportable accident and the circumstances of the ~~collision within five days following such death. Every~~ accident. The medical examiner must file the report within five days after the death. A hospital ~~shall~~ must notify the medical examiner of the county in which the ~~collision~~ accident occurred of the death within the hospital of any person who dies as a result of injuries apparently sustained in a ~~collision involving a motor vehicle.~~ reportable accident.

(g) Repealed by Session Laws 1987, c. 49.

(h) Forms. -- The Division ~~shall prepare and shall upon request supply to police, [medical examiners], sheriffs, and other suitable agencies, or individuals, forms for collision reports calling for sufficiently detailed information to disclose with reference to a highway collision the cause, conditions then existing, and the persons and vehicles involved. All collision reports required by this section shall be made on forms supplied or approved by the Division.~~ must provide forms to persons required to make reports under this section and the reports must be made on the forms provided. The forms must ask for the following information about a reportable accident:

(1) The cause of the accident.

(2) The conditions existing at the time of the accident.

(3) The persons and vehicles involved.

(i) Effect of Report. -- ~~All collision reports, including supplemental reports, above mentioned, except those made by State, city or county police, shall be~~ A report of an accident made under this section by a person who is not a law enforcement officer is without ~~prejudice and shall be~~ prejudice, is for the use of the ~~Division~~ Division, and shall not be used in any manner as evidence, or for any other purpose in any trial, civil or criminal, arising out of ~~such collision except that the Division shall furnish upon demand of any court~~ the accident. Any other report of an accident made under this section may be used in any manner as evidence, or for any other purpose, in any trial, civil or criminal, as permitted under the rules of evidence. At the demand of a court, the Division must give the court a properly executed certificate stating that a particular ~~collision~~ accident report has or has not been filed with the Division solely to prove a compliance with this section.

The reports made by ~~State, city or county police and medical examiners, but no other reports required under this section, shall be subject to the~~ persons who are not law enforcement officers or medical examiners are not public records. The reports made by law enforcement officers and medical examiners are public records and are open to inspection ~~of members of~~ by the general public at all reasonable ~~times, and the Division shall furnish a certified copy of any such report to any member of the general public who shall request the same, upon receipt of a fee of four dollars ($4.00) certified copy, or the Division is authorized to furnish without charge to departments of the governments of the United States, states, counties, and cities certified copies of such collision reports for official use.~~ times. The Division must give a certified copy of one of these reports to a member of the general public who requests a copy and pays the fee set in G.S. 20-42.

~~Nothing herein provided shall prohibit the Division from furnishing to interested parties only the name or names of insurers and insured and policy number shown upon any reports required under this section.~~

(j) Statistics. -- The Division ~~shall receive collision reports required to be made by this section, and may tabulate and analyze such reports and publish annually, or at more frequent intervals,~~ may periodically publish statistical information on motor vehicle accidents based ~~thereon as to the number, cause and location of highway collisions.~~

~~Based upon its findings after analysis, the~~ on information in accident reports. The Division may conduct ~~further necessary~~ detailed research to determine more fully the cause and control of ~~highway collisions. It~~ accidents and may ~~further~~ conduct experimental field tests within areas of the State from time to time to prove the practicability of various ideas advanced in traffic control and ~~collision~~ accident prevention.

(k) Punishment. -- A violation of any provision of this section is a ~~Class 2 misdemeanor.~~ misdemeanor of the Class set in G.S. 20-176."

Sec. 3. G.S. 20-179(d)(3) reads as rewritten:

"(3) Negligent driving that led to ~~an accident causing property damage in excess of five hundred dollars ($500.00) or personal injury.~~ a reportable accident."

Sec. 4. G.S. 20-279.4 is repealed.

Sec. 5. G.S. 20-279.5(a) reads as rewritten:

"(a) ~~If at the expiration of 20 days after the receipt of a report of a motor vehicle accident within this State which has resulted in bodily injury or death or total property damage in excess of five hundred dollars ($500.00), the Commissioner does not have on file evidence satisfactory to him that the person who would otherwise be required to file security under subsection (b) of this section has been released from liability, or has been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount, in installments or otherwise, or is for any other reason not required to file security under this Article with respect to all claims for injuries or damages resulting from the accident, the Commissioner shall determine the amount of security which shall be sufficient in his judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner.~~ When the Division receives a report of a reportable accident under G.S. 20-166.1, the Commissioner must determine whether the owner or driver of a vehicle involved in the accident must file security under this Article and, if so, the amount of security the owner or driver must file. The Commissioner must make this determination at the end of 20 days after receiving the report."

Sec. 6. G.S. 20-279.11 reads as rewritten:

"*§ 20-279.11. Matters not to be evidence in civil suits.*

Neither the ~~report required by G.S. 20-279.4,~~ information on financial responsibility contained in an accident report, the action taken by the Commissioner pursuant to this Article, the findings, if any, of the Commissioner upon which ~~such~~ the action is based, or the security filed as provided in this Article shall be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages."

Sec. 7. G.S. 20-279.31 reads as rewritten:

"*§ 20-279.31. Other violations; penalties.*

(a) ~~Failure to report an accident as required in G.S. 20-279.4 is a Class 3 misdemeanor punishable only by a fine not in excess of twenty-five dollars ($25.00) and in the event of injury or damage to the person or property of another in such accident, the~~ The Commissioner shall suspend the license of ~~the~~ a person ~~failing~~ who fails to ~~make such report, or the nonresident's~~

~~operating privilege of such person, until such report has been filed and for such further~~ report a reportable accident, as required by G.S. 20-166.1, until the Division receives a report and for an additional period ~~not to~~ set by the Commissioner. The additional period may not exceed 30 ~~days as the Commissioner may fix.~~ days.

(b) Any person who ~~gives~~ does any of the following commits a Class 1 misdemeanor:

(1) Gives information required in a report ~~or otherwise as provided for in G.S. 20-279.4~~ of a reportable accident, knowing or having reason to believe ~~that such~~ the information is ~~false, or who shall forge or, without authority, sign~~ false.

(2) Forges or without authority signs any evidence of proof of financial ~~responsibility, or who files~~ responsibility.

(3) Files or offers for filing any ~~such~~ evidence of proof of financial responsibility, knowing or having reason to believe that it is forged or signed without ~~authority, is guilty of a Class 1 misdemeanor.~~ authority.

(c) Any person willfully failing to return a license as required in G.S. 20-279.30 is guilty of a Class 3 misdemeanor.

(c1) Any person who makes a false affidavit or knowingly swears or affirms falsely to any matter under G.S. 20-279.5, 20-279.6, or 20-279.7 is guilty of a Class I felony.

(d) Any person who shall violate any provision of this Article for which no penalty is otherwise provided is guilty of a Class 2 misdemeanor."

Sec. 8. G.S. 20-42(b) reads as rewritten:

"(b) The Commissioner and officers of the Division designated by the Commissioner may prepare under the seal of the Division and deliver upon request a certified copy of any document of the ~~Division, charging a fee of~~ Division for a fee. The fee for a document, other than an accident report under G.S. 20-166.1, is five dollars ~~($5.00) for each document certified.~~ ($5.00). The fee for an accident report is four dollars ($4.00). A certified copy shall be admissible in any proceeding in any court in like manner as the original thereof, without further certification. The certification fee does not apply to a document furnished ~~to State officials or to county, municipal, or court officials of this State~~ for official ~~use.~~ use to a judicial official or to an official of the federal government, a state government, or a local government."

Sec. 9. This act becomes effective January 1, 1996, and applies to accidents and offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 7th day of June, 1995.

S.B. 303 **CHAPTER 192**

AN ACT TO PROVIDE FOR REMOVAL OF MEMBERS OF STATE BOARD OF COMMUNITY COLLEGES AFTER UNEXCUSED ABSENCES FROM THREE CONSECUTIVE SCHEDULED BOARD MEETINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115D-2.1 is amended by adding a new subsection to read:

"(i) The State Board of Community Colleges may declare vacant the office of an appointed or elected member who does not attend three consecutive scheduled meetings without justifiable excuse. The chairman of the State Board shall notify the appropriate appointing or electing authority of any vacancy."

Sec. 2. This act is effective upon ratification, and shall apply to absences occurring on or after that date.

In the General Assembly read three times and ratified this the 7th day of June, 1995.

S.B. 353 **CHAPTER 193**

AN ACT TO MAKE TECHNICAL AMENDMENTS AND CORRECTIONS IN THE INSURANCE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-1-5 reads as rewritten:

"*§ 58-1-5. Definitions.*

In ~~Articles 1 through 64 of~~ this Chapter, unless the context ~~otherwise requires,~~ clearly requires otherwise:

(1) 'Alien company' means a company incorporated or organized under the laws of any jurisdiction outside of the United States.

(2) 'Commissioner' means Commissioner of Insurance of North ~~Carolina.~~ Carolina or an authorized designee of the Commissioner.

(3) 'Company' or 'insurance company' or 'insurer' ~~shall be deemed to include~~ includes any corporation, association, partnership, society, order, individual or aggregation of individuals engaging or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships and corporations.

(4) 'Department' means Department of Insurance of North Carolina.

(5) 'Domestic company' means a company incorporated or organized under the laws of this State.

(6) 'Foreign company' means a company incorporated or organized under the laws of the United States or of any jurisdiction within the United States other than this State.

(7) 'NAIC' means the National Association of Insurance Commissioners.

(8) 'Nuclear insured' means a public utility procuring insurance against radioactive contamination and other risks of direct physical loss at a nuclear electric generating plant.

(9) 'Person' ~~includes an individual, aggregation of individuals, corporation, company, association and partnership.~~ means an individual, partnership, firm, association, corporation, joint-stock

company, trust, any similar entity, or any combination of the foregoing acting in concert. 'Person' does not mean the State of North Carolina or any county, city, or other political subdivision of the State of North Carolina.

(10) The singular form shall include the plural, and the masculine form shall include the feminine wherever appropriate."

Sec. 2. G.S. 58-1-15(b) reads as rewritten:

"(b) Any warranty made solely by a manufacturer, distributor, or seller of goods or services without charge, or an extended warranty offered as an option and made solely by a manufacturer, distributor, or seller of goods or services for charge, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or any other remedial measure, including replacement of goods or repetition of services, shall not be a contract of insurance under Articles 1 through 64 of this Chapter; however, service agreements on motor vehicles are governed by ~~G.S. 58-1-25 and G.S. 58-1-35 through G.S. 58-1-50.~~ G.S. 58-1-25, 58-1-35, and 58-1-36. Service agreements on home appliances are governed by ~~G.S. 58-1-30 through G.S. 58-1-50.~~ G.S. 58-1-30, 58-1-35, and 58-1-36."

Sec. 3. G.S. 58-1-25 reads as rewritten:

"*§ 58-1-25. Motor vehicle service agreement companies.*

(a) This section applies to all motor vehicle service agreement companies soliciting business in this State, but it does not apply to performance guarantees, warranties, or motor vehicle service agreements made by

(1) A manufacturer,

(2) A distributor, or

(3) A subsidiary or affiliate of a manufacturer or a distributor, where fifty-one percent (51%) or more of the subsidiary or affiliate is owned directly or indirectly by

a. The manufacturer,

b. The distributor, or

c. The common owner of fifty-one percent (51%) or more of the manufacturer or distributor

in connection with the sale of motor vehicles. This section does not apply to any motor vehicle dealer licensed to do business in this State (i) whose primary business is the retail sale and service of motor vehicles; (ii) who makes and administers its own service agreements with or without association with a third-party administrator or who makes its own service agreements in association with a manufacturer, distributor, or their subsidiaries or affiliates; and (iii) whose service agreements cover only vehicles sold by the dealer to its retail customer; provided that the dealer complies with ~~G.S. 58-1-35.~~ G.S. 58-1-35 and G.S. 58-1-36. A motor vehicle dealer who sells a motor vehicle service agreement to a consumer, as defined in 15 U.S.C. § 2301(3), ~~shall not be~~ is not deemed to have made a written warranty to the consumer with respect to the motor vehicle sold or to have entered into a service contract with the consumer that applies to the motor vehicle, as provided in 15 U.S.C. § 2308(a), if: (i) the motor vehicle dealer acts as a mere agent of a third party in selling the motor vehicle service agreement; and (ii) the motor vehicle dealer would, after the sale of the motor vehicle service agreement, have no further obligation under the

motor vehicle service agreement to the consumer to service or repair the vehicle sold to the consumer at or within 90 days before the dealer sold the motor vehicle service agreement to the consumer.

(b) The following definitions apply in this section and in ~~G.S. 58-1-30 through G.S. 58-1-50;~~ G.S. 58-1-30, 58-1-35, and 58-1-36:

(1) Authorized insurer. -- An insurance company authorized to write liability insurance under Articles 7, 16, 21, or 22 of this Chapter.

(2) Distributor. -- Defined in G.S. 20-286(3).

(3) Licensed insurer. -- An insurance company licensed to write liability insurance under Article 7 or 16 of this Chapter.

(4) Motor vehicle. -- Defined in G.S. 20-4.01(23), but also including mopeds as defined in G.S. 20-4.01(27)d1.

(5) Motor vehicle service agreement. -- Any contract or agreement indemnifying the motor vehicle service agreement holder against loss caused by failure, arising out of the ownership, operation, or use of a motor vehicle, of a mechanical or other component part of the motor vehicle that is listed in the agreement. The term does not mean a contract or agreement guaranteeing the performance of parts or lubricants manufactured by the guarantor and sold for use in connection with a motor vehicle where no additional consideration is paid or given to the guarantor for the contract or agreement beyond the price of the parts or lubricants.

(6) Motor vehicle service agreement company. -- Any person that issues motor vehicle service agreements and that is not a licensed insurer.

(c) through (g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 730, s. 3."

Sec. 4. G.S. 58-1-35(a) reads as rewritten:

"(a) The provisions of this section and ~~G.S. 58-1-40 through G.S. 58-1-50~~ G.S. 58-1-36 apply to companies specified in G.S. 58-1-25 and G.S. 58-1-30."

Sec. 5. G.S. 58-1-35(b) reads as rewritten:

"(b) The following definitions apply in this section and in ~~G.S. 58-1-40 through G.S. 58-1-50;~~ G.S. 58-1-36:

(1) Service agreement. Includes motor vehicle service agreements and home appliance service agreements.

(2) Service agreement company. Includes motor vehicle service agreement companies and home appliance service agreement companies."

Sec. 6. G.S. 58-2-50 reads as rewritten:

"*§ 58-2-50. ~~Examinations, investigations and hearings; notice of hearing.~~ Examinations and investigations.*

All ~~examinations, investigations and hearings~~ examinations and investigations provided for by ~~Articles 1 through 64 of~~ this Chapter may be conducted by the Commissioner personally or by one or more ~~of his~~ deputies, investigators, actuaries, examiners or employees designated ~~by him~~ for the purpose. If the Commissioner or any investigator appointed to conduct ~~such~~ the investigations is of the opinion that there is evidence to charge any person or persons with a criminal violation of ~~the insurance laws~~

~~he~~ any provision of this Chapter, the Commissioner may arrest with warrant or cause ~~such~~ the person or persons to be arrested. ~~All hearings shall, unless otherwise specially provided, be held at such time and place as shall be designated in a notice which shall be given by the Commissioner in writing to the person cited to appear, at least 10 days before the date designated therein. The notice shall state the subject of inquiry and the specific charges, if any. It shall be sufficient to give such notice either by delivering it to such person or by depositing the same in the United States mail, postage prepaid, and addressed to the last known place of business of such person.~~"

Sec. 7. G.S. 58-2-52(a) reads as rewritten:

"(a) The Commissioner may adopt rules for the hearing of appeals by the Commissioner or the Commissioner's designated hearing officer under G.S. 58-36-35, 58-37-65, 58-45-50, 58-46-30, 58-48-40(c)(7), 58-48-42, ~~58-62-51(c), and G.S. 58-62-92.~~ and 58-62-51(c). These rules may provide for prefiled evidence and testimony of the parties, prehearing statements and conferences, settlement conferences, discovery, subpoenas, sanctions, motions, intervention, consolidation of cases, continuances, rights and responsibilities of parties, witnesses, and evidence."

Sec. 8. G.S. 58-2-225, 58-5-60, and 58-5-65 are repealed.

Sec. 9. G.S. 58-3-50 reads as rewritten:

"*§ 58-3-50. Companies must do business in own name; emblems, insignias, etc.*

Every insurance company or group of companies must conduct its business in the State in, and the policies and contracts of insurance issued by it shall be headed or entitled only by, its proper or corporate ~~name.~~ name or names. There shall not appear on ~~the face of~~ the policy ~~or on its filing back~~ anything that would indicate that it is the obligation of any other than the company or companies responsible for the payment of losses under the policy, though it will be permissible to stamp or print on the ~~bottom of the filing back,~~ policy, the name or names of the department or general agency issuing the same, and the group of companies with which the company is financially affiliated. The use of any emblem, insignia, or anything other than the true and proper corporate name of ~~such~~ the company or group of companies shall be permitted only with the approval of the Commissioner."

Sec. 10. G.S. 58-3-100(a) reads as rewritten:

"(a) The Commissioner may revoke, suspend, or refuse to renew the license of any insurer if:

(1) The insurer fails or refuses to comply with any law, order or rule applicable to the insurer.
(2) The insurer's financial condition is unsound, or its assets above its liabilities, exclusive of capital, are less than the amount of its capital or required minimum surplus.
(3) The insurer has published or made to the Department or to the public any false statement or report.
(4) ~~Whenever the~~ The insurer refuses to submit to any examination authorized by law.

(5) ~~Whenever the~~ The insurer is found to make a practice of unduly engaging in litigation or of delaying the investigation of claims or the adjustment or payment of valid claims."

Sec. 11. Article 5 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"*§ 58-5-63. Interest; liquidation of deposits for liabilities.*

(a) All insurance companies making deposits under this Article are entitled to interest on those deposits, which shall remain in the deposit accounts. The right to interest is subject to a company paying its insurance policy liabilities. If any company fails to pay those liabilities, interest accruing after the failure is payable to the Commissioner for the payment of those liabilities under subsection (b) of this section.

(b) If any company fails to pay its insurance policy liabilities after those liabilities have been established by settlement or final adjudication, the Commissioner may liquidate the amount of the company's deposit and accrued interest specified in subsection (a) of this section that will satisfy the company's policy liabilities and make payment to the person to whom the liability is owed. After payment has been made, the Commissioner may require the company to deposit the amount paid out under this subsection."

Sec. 12. G.S. 58-5-70 reads as rewritten:

"*§ 58-5-70. Lien of policyholders; action to enforce.*

Upon the securities deposited with the Commissioner by any ~~such~~ foreign or alien insurance company, the holders of all contracts of the company who are citizens or residents of this State at ~~such~~ the time, or who hold policies issued upon property in the State, shall have a lien for the amounts due them, respectively, under or in consequence of ~~such~~ the contracts for losses, equitable values, return premiums, or otherwise, and shall be entitled to be paid ratably out of the proceeds of ~~said~~ the securities, if ~~such~~ the proceeds ~~be~~ are not sufficient to pay all of ~~said~~ the contract holders. When any foreign or alien insurance company depositing securities ~~as aforesaid~~ under this Article becomes insolvent or bankrupt or makes an assignment for the benefit of its creditors, any holder of ~~such~~ the contract may begin an action in the Superior Court of the County of Wake to enforce the lien for the benefit of all the holders of ~~such~~ the contracts. The Commissioner shall be a party to the suit, and the funds shall be distributed by the court, but ~~no cost of such action shall~~ the cost of the action shall not be adjudged against the Commissioner."

Sec. 13. G.S. 58-7-21(a) reads as rewritten:

"(a) As used in this section and in G.S. 58-7-26, 58-7-30, and ~~58-7-32;~~ 58-7-31:

(1) 'Reinsurance' means a transfer of insurance risk from a ceding insurer to an assuming insurer.

(2) 'Insurance risk' means an uncertainty regarding the ultimate amount of any claim payment (underwriting risk) or an uncertainty regarding the timing of ~~such~~ the payments (timing risk), or both."

Sec. 14. G.S. 58-7-30 reads as rewritten:

"*§ 58-7-30. Insolvency of ceding insurer; exceptions.*

~~No~~ Notwithstanding any other provision of this Article, no credit shall be allowed, as an admitted asset or as a deduction from liability, to any ceding

insurer for reinsurance, unless the reinsurance is payable by the assuming insurer, on the basis of claims allowed against the ceding insurer under the contract or contracts reinsured without diminution because of the insolvency of the ceding insurer, directly to the ceding insurer or to its domiciliary receiver except (1) where the contract specifically provides for another payee of the reinsurance in the event of the insolvency of the ceding insurer or (2) where the assuming insurer, with the consent of the direct insured or insureds, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution of the obligations of the ceding insurer to the payees."

Sec. 15. G.S. 58-7-31(a) reads as rewritten:

"(a) ~~This~~ Notwithstanding any other provision of this Article, this section applies to every domestic life and accident and health insurer, to every other licensed life and accident and health insurer that is not subject to a substantially similar statute or administrative rule in its domiciliary state, and to every licensed property and casualty insurer with respect to its accident and health business. This section does not apply to assumption reinsurance, yearly renewable term reinsurance, nor to certain nonproportional reinsurance, such as stop loss or catastrophe reinsurance."

Sec. 16. G.S. 58-7-31(f) reads as rewritten:

"(f) In the case of a letter of intent, a reinsurance ~~agreement,~~ agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding 90 days after the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded."

Sec. 17. G.S. 58-7-75(1) reads as rewritten:

"(1) Stock Life Insurance Companies. -- A stock corporation may be organized in the manner prescribed in this Chapter and licensed to do the business of life insurance, only when it has paid-in capital of at least six hundred thousand dollars ($600,000) and a paid-in initial surplus of at least nine hundred thousand dollars ($900,000), and it may in addition do the kind of business specified in G.S. 58-7-15(2), without having additional capital or surplus. Every such company shall at all times thereafter maintain a minimum capital of not less than six hundred thousand dollars ($600,000) and a minimum surplus of at least one hundred fifty thousand dollars ($150,000). Provided that, any such corporation may do either or both of the kinds of insurance authorized for ~~stock,~~ stock accident and health insurance companies, as set out in ~~paragraphs a and b of subdivision (3) of G.S. 58-7-15 (accidental death or personal injury, and noncancelable disability),~~ G.S. 58-7-15(3)a. and b., where its charter so permits, and ~~when and so~~ only as long as it ~~meets and~~ maintains a minimum capital and surplus equal to the sum of the minimum capital and surplus requirements of this subdivision ~~(1)~~a and the minimum capital and surplus requirements of ~~subdivision (2)a and/or (2)b hereof as applicable.~~ subdivision (2) of this section."

Sec. 18. G.S. 58-7-150(c) reads as rewritten:

"(c) An application for ~~merger or~~ consolidation under this section shall be accompanied by a nonrefundable fee of two hundred fifty dollars ($250.00)."

Sec. 19. G.S. 58-7-177 reads as rewritten:

"*§ 58-7-177. Investments in subsidiaries and affiliated corporations.*

(a) Any insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries, subject to the limitations of this Chapter. The subsidiaries may conduct any kind of business, and their authority to do so shall not be limited because they are subsidiaries of an insurer, except where in conflict with Article 19 of this Chapter.

(b) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under this Chapter, an insurer may also invest and maintain investments in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries ~~or affiliated corporations~~ under the provisions and limitations outlined in G.S. 58-19-10.

(c) ~~For purposes of this section:~~

~~(1) 'Subsidiary' has the same meaning as in G.S. 58-19-5(7).~~

~~(2) 'Affiliated' has the same meaning as in G.S. 58-19-5(1).~~

As used in this section 'subsidiary' has the same meaning as in G.S. 58-19-5(7).

(d) Debt obligations, other than mortgage loans, made under the authority of this section must meet amortization requirements in accordance with the latest edition of the NAIC publication entitled 'Valuation of Securities'; provided that the amortization methodology is acceptable to the Commissioner.

(e) For purposes of this section, an insurer's investment in a subsidiary ~~or affiliated corporation~~ shall be considered to include all sums lent to the ~~subsidiary or affiliated corporation.~~ subsidiary."

Sec. 20. G.S. 58-9-2(a)(6)c. reads as rewritten:

"c. An underwriting manager who, pursuant to contract, manages all the reinsurance ~~operating~~ operations of a reinsurer, is under common control with the reinsurer under Article 19 of this Chapter, and whose compensation is not based on the volume of premiums written;".

Sec. 21. G.S. 58-12-11(f) reads as rewritten:

"(f) Every domestic insurer that files a risk-based capital plan or revised risk-based capital plan with the Commissioner shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance regulator in any state in which the insurer is authorized to do business if:

(1) That state has a risk-based capital provision substantially similar to G.S. 58-12-21(a); and

(2) The insurance regulator of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the risk-based capital plan or revised risk-based capital plan in that state no later than the later of:

a. Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or

b. The date on which the risk-based capital plan or revised risk-based capital plan is filed under ~~G.S. 58-12-30(c).~~ subsection (c) or (d) of this section."

Sec. 22. G.S. 58-12-35(a) reads as rewritten:

"(a) All risk-based capital reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and the risk-based capital plans, including the results or report of any examination or analysis of an insurer performed pursuant hereto and any ~~Corrective Order~~ corrective order issued by the Commissioner pursuant to examination or analysis, with respect to any domestic insurer or foreign insurer that are filed with the Commissioner constitute information that shall be kept confidential by the Commissioner. This information shall not be made public or be subject to subpoena, other than by the Commissioner, and then only for the purpose of enforcement actions taken by the Commissioner under this Article or any other provision of this Chapter."

Sec. 23. G.S. 58-12-45 reads as rewritten:

"*§ 58-12-45. Foreign insurers.*

(a) Any foreign insurer shall, upon written request of the Commissioner, submit to the Commissioner a risk-based capital report as of the end of the calendar year just ended the later of:

(1) The date a risk-based capital report would be required to be filed by a domestic insurer under this Article; or

(2) Fifteen days after the request is received by the foreign insurer.

Any foreign insurer shall, at the written request of the Commissioner, promptly submit to the Commissioner a copy of any risk-based capital plan that is filed with the insurance regulator of any other state.

(b) In the event of a company action level ~~event or~~ event, regulatory action level ~~event~~ event, or authorized control level event with respect to any foreign insurer as determined under the risk-based capital statute or rule applicable in the state of domicile of the insurer, or if no risk-based capital ~~provision~~ statute or rule is in force in that state under the provisions of this Article, if the insurance regulator of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk-based capital plan in the manner specified under the risk-based capital statute or, if no risk-based capital provision is in force in that state, under G.S. 58-12-11, the Commissioner may require the foreign insurer to file a risk-based capital plan with the Commissioner. In that event the failure of the foreign insurer to file a risk-based capital plan with the Commissioner is grounds to order the insurer to cease and desist from writing new insurance business in this State.

(c) In the event of a mandatory control level event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation or liquidation statutes of the state ~~or~~ of domicile of the foreign insurer, the Commissioner may make application to the Superior Court of Wake County as permitted under Article 30 of this Chapter with respect to the liquidation of property of foreign

insurers found in this State; and the occurrence of the mandatory control level event is an adequate ground for the application."

Sec. 24. G.S. 58-14-15 reads as rewritten:

"*§ 58-14-15. Penalties provided for unauthorized acts.*

~~Whenever~~ When any domestic insurer ~~shall knowingly engage~~ knowingly engages in the practice of soliciting, advertising or making contracts for insurance in states or jurisdictions in which it is not licensed, the Commissioner ~~shall be authorized, as hereinafter provided, to~~ may issue an order requiring ~~such~~ the company to cease and desist from engaging in such activities and, for the purposes of this section, the acts prohibited by G.S. 58-14-10 and the foregoing sections, are declared to be an unfair trade practice within the meaning of G.S. 58-63-15 and 58-63-40. ~~Provided, whenever~~ When the Commissioner ~~shall have~~ has reason to believe that any domestic company has been engaged or is engaging in the practice of knowingly soliciting, advertising or writing contracts of insurance on risks within a state or jurisdiction in which it is not licensed, ~~he~~ the Commissioner shall ~~proceed to~~ serve ~~such~~ the company with notice of hearing and the hearing shall ~~in all respects~~ conform with the hearing procedure set forth in G.S. 58-63-25. Any action taken by the Commissioner after ~~such~~ the hearing shall ~~be in compliance~~ comply with ~~G.S. 58-63-30,~~ G.S. 58-63-32, and any company aggrieved by an order of the Commissioner ~~shall be~~ is entitled to ~~that~~ the judicial review ~~as is~~ provided in G.S. 58-63-35."

Sec. 25. G.S. 58-16-5(6) reads as rewritten:

"(6) Satisfies the Commissioner that it is in substantial compliance with the provisions of G.S. 58-7-21, 58-7-26, 58-7-30, and ~~58-7-32~~ 58-7-31 and Article 13 of this Chapter."

Sec. 26. G.S. 58-19-25(a) reads as rewritten:

"(a) Every insurer that is licensed to do business in this State and that is a member of an insurance holding company system shall register with the Commissioner, except a foreign insurer subject to the registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section and ~~G.S. 58-19-30(a), 58-19-30(b), 58-19-30(c), and 58-19-30(d),~~ G.S. 58-19-30 or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each change or addition. The insurer shall also file a copy of its registration statement and any amendments to the statement in each state in which that insurer is authorized to do business if requested by the insurance regulator of that state. Any insurer that is subject to registration under this section shall register within 30 days after it becomes subject to registration, and an amendment to the registration statement shall be filed by March 1 of each year for the previous calendar year; unless the Commissioner for good cause shown extends the time for registration or filing, and then within the extended time. All registration statements shall contain a summary, on a form prescribed by the Commissioner, outlining all items in the current registration statement representing changes from the prior registration

statement. The Commissioner may require any insurer that is a member of a holding company system that is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulator of its domiciliary jurisdiction."

Sec. 27. G.S. 58-19-35(c) reads as rewritten:

"(c) Each registered insurer or acquiring party producing records, books, or papers for examination pursuant to subsection (a) of this section is liable for and shall pay the expenses of ~~such~~ the examination in accordance with ~~G.S. 58-2-130~~ G.S. 58-2-133 and G.S. 58-6-5."

Sec. 28. G.S. 58-21-40(c) reads as rewritten:

"(c) The Commissioner may, at ~~such~~ times ~~that he deems to be~~ deemed appropriate, make or cause to be made an examination of each advisory organization; in which case the provisions of ~~G.S. 58-2-130, 58-2-140,~~ G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-150, 58-2-155, 58-2-180, 58-2-185, 58-2-190, 58-2-195, and 58-2-200 shall apply. If the Commissioner finds ~~such~~ the advisory organization or any member thereof to be in violation of this Article, ~~he~~ the Commissioner may issue an order requiring the discontinuance of ~~such~~ the violation."

Sec. 29. G.S. 58-24-100 reads as rewritten:

"*§ 58-24-100. Investments.*

A society shall invest its funds only in ~~such~~ investments ~~as~~ that are authorized by the laws of this State for the investment of assets of life insurers and subject to the limitations thereon. Any foreign or alien society permitted or seeking to do business in this State must comply in substance with the investment requirements and limitations imposed by ~~G.S. 58-7-85~~ Article 7 of this Chapter and applicable to life insurers; provided, that any ~~such~~ society that invests its funds in accordance with the laws of the state, district, territory, country, or province in which it is incorporated, shall thereby be deemed to be in compliance with ~~G.S. 58-7-85~~ the investment requirements and limitations for a period of two years from January 1, 1988."

Sec. 30. G.S. 58-28-5(b) reads as rewritten:

"(b) Any person in this State may directly procure or directly renew insurance with an unlicensed insurer without the involvement of an agent, broker, or surplus lines licensee, on a risk located or to be performed, in whole or in part, in this ~~State, other than insurance procured or renewed pursuant to subsections (a)(1) through (a)(6) of this section.~~ State. ~~Any such~~ The person shall, within 30 days after the date the insurance is procured or renewed, file a written report with the Commissioner on forms prescribed by the Commissioner. The report must contain the name and address of the insured; name and address of the insurer; the subject of insurance; a general description of the coverage; the amount of premium currently charged; and ~~such~~ any additional information ~~as~~ requested by the Commissioner. The report must also contain an affidavit of the insured that states that the full amount or kind of insurance cannot be obtained from insurers that are admitted to do business in this State; and that the insured has made a diligent search among the insurers that are admitted to transact and are actually writing the particular kind and class of insurance in this

State. Gross premiums charged for ~~such~~ the insurance, less any return premiums, are subject to a tax at the rate of five percent (5%). At the time of filing the report required by this subsection, the insured shall pay the tax to the Commissioner. The Commissioner has the powers specified in G.S. 58-21-90 with respect to the tax levied by this subsection."

Sec. 31. G.S. 58-30-75(9) reads as rewritten:

"(9) Within the previous four years the insurer has willfully violated its charter or articles of incorporation, its bylaws, Articles 1 through ~~64~~ 67 of this Chapter, or any valid order of the Commissioner under G.S. 58-30-60."

Sec. 32. G.S. 58-30-300(c) reads as rewritten:

"(c) The owner of a ~~secure~~ secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender ~~his~~ the owner's security and file ~~his~~ the claim as a general creditor, or the claim may be discharged by resort to the security in accordance with G.S. 58-30-215 in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors."

Sec. 33. G.S. 58-31-60(a) reads as rewritten:

"(a) Employee Insurance Committee. -- The head of each State government employee payroll unit offering payroll deduction insurance products to employees shall appoint an Employee Insurance Committee for the following purposes:

(1) To review insurance products currently offered through payroll deduction to the State employees in the Employee Insurance Committee's payroll unit to determine if those products meet the needs and desires of employees in the Employee Insurance Committee's payroll unit.

(2) To select the types of insurance products that reflect the needs and desires of employees in the Employee Insurance Committee's payroll unit.

(3) To competitively select the best insurance products of the types determined by the Employee Insurance Committee to reflect the needs and desires of the employees of that payroll unit.

As used in this section, 'insurance product' includes a prepaid legal services plan registered under G.S. 84-23.1."

Sec. 34. G.S. 58-34-2(a)(3) reads as rewritten:

"(3) 'Managing general agent' or 'MGA' means any person who manages all or part of the insurance business of an insurer (including the management of a separate division, department, or underwriting office) and acts as an agent for the insurer, whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with persons under common control, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent (5%) of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following activities related to the business produced: (i)

adjusts or pays any claims, or (ii) negotiates reinsurance on behalf of the insurer. 'MGA' does not mean an employee of the insurer; an underwriting manager who, pursuant to contract, manages ~~all~~ all or part of the insurance operations of the insurer, is under common control with the insurer, is subject to Article 19 of this Chapter, and whose compensation is not based on the volume of premiums written; a person who, under Article 15 of this Chapter, is designated and authorized by subscribers as the attorney-in-fact for a reciprocal having authority to obligate them on reciprocal and other insurance contracts; or a U.S. Manager of the United States branch of an alien insurer."

Sec. 35. Reserved.

Sec. 36. Reserved.

Sec. 37. G.S. 58-41-50(b) reads as rewritten:

"(b) With the exception of inland marine insurance that is not written according to manual rates and rating plans, all rates or prospective loss cost multipliers by licensed fire and casualty companies or their designated rating organizations must be filed with the Commissioner at least 60 days before they may be used in this State. Any filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the filer."

Sec. 38. G.S. 58-47-5(4) reads as rewritten:

"(4) 'Health care provider' means any person who pursuant to the provisions of Chapter 90 of the General Statutes is licensed, or is otherwise registered or certified to engage in the practice of, or otherwise performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology; or a hospital as defined by ~~G.S. 131-126.1(3);~~ G.S. 131E-76(3); or a nursing home as defined by ~~G.S. 130-9(e)(2);~~ G.S. 131E-101(6); or any other person who is legally responsible for the negligence of ~~such~~ the person, hospital or nursing home; or any person acting at the direction or under the supervision of a health care provider."

Sec. 39. G.S. 58-47-10(b) reads as rewritten:

"(b) Investment and Management. -- All moneys ~~which~~ that belong to the fund and are collected or received under this Article shall be held in trust, deposited in a segregated account, invested and reinvested by the Board in accordance with the reserve investment requirements of ~~G.S. 58-7-90,~~ Article 7 of this Chapter for property and liability insurers, and shall not become a part of the general fund of the State. All interest and revenues from moneys belonging to the fund shall inure solely to the benefit and use of the fund. The Board shall be authorized to withdraw funds from ~~such~~ the account as amounts payable under G.S. 58-47-35 and other expenses become due and payable. No part of the revenues or assets of the fund shall inure to the benefit of or be distributable to the Board or any member thereof or any officer or employee of the Board, except for services

rendered. All expenses and salaries connected with the administration and operation of the fund shall be paid out of the fund."

Sec. 40. G.S. 58-49-5 reads as rewritten:

"*§ 58-49-5. Authority and jurisdiction of Commissioner.*

Notwithstanding any other provision of law, and except as provided in this Article, any person that provides coverage in this State for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether ~~such~~ the coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the ~~exclusive~~ jurisdiction of the Commissioner, unless the person shows that while providing ~~such~~ the services it is subject to the exclusive jurisdiction of another agency or subdivision of this State or of the federal government."

Sec. 41. Effective October 1, 1998, G.S. 58-50-30(a) reads as rewritten:

"(a) Discrimination between individuals of the same class in the amount of premiums or rates charged for any policy of insurance covered by Articles 50 through 55 of this Chapter, or in the benefits payable thereon, or in any of the terms or conditions of ~~such~~ the policy, or in any other manner whatsoever, is prohibited.

Whenever any policy of insurance governed by Articles 1 through 64 of this Chapter provides for payment of or reimbursement for any service rendered in connection with a condition or complaint ~~which~~ that is within the scope of practice of a duly licensed optometrist, ~~or~~ a duly licensed podiatrist, ~~or~~ a duly licensed dentist, ~~or~~ a duly licensed chiropractor, a duly certified clinical social worker, or a duly licensed psychologist, the insured or other persons entitled to benefits under ~~such~~ the policy shall be entitled to payment of or reimbursement for ~~such~~ the services, whether ~~such~~ the services be performed by a duly licensed physician, ~~or~~ a duly licensed optometrist, ~~or~~ a duly licensed podiatrist, ~~or~~ a duly licensed dentist, ~~or~~ a duly licensed chiropractor, a duly certified clinical social worker, or a duly licensed psychologist, notwithstanding any provision contained in ~~such~~ the policy. Whenever any policy of insurance governed by Articles 1 through 64 of this Chapter provides for certification of disability ~~which~~ that is within the scope of practice of a duly licensed physician, ~~or~~ a duly licensed optometrist, ~~or~~ a duly licensed podiatrist, ~~or~~ a duly licensed dentist, ~~or~~ a duly licensed chiropractor, a duly certified clinical social worker, or a duly licensed psychologist, the insured or other persons entitled to benefits under ~~such~~ the policy shall be entitled to payment of or reimbursement for ~~such~~ the disability whether ~~such~~ the disability be certified by a duly licensed physician, ~~or~~ a duly licensed optometrist, ~~or~~ a duly licensed podiatrist, ~~or~~ a duly licensed dentist, ~~or~~ a duly licensed chiropractor, a duly certified clinical social worker, or a duly licensed psychologist, notwithstanding any provisions contained in ~~such~~ the policy. The policyholder, insured, or beneficiary shall have the right to choose the provider of ~~such~~ the services notwithstanding any provision to the contrary in any other statute.

Whenever any policy of insurance provides coverage for medically necessary treatment, the insurer shall not impose any limitation on treatment or levels of coverage if performed by a duly licensed chiropractor acting

within the scope of ~~his~~ the chiropractor's practice as defined in G.S. 90-151 unless a comparable limitation is imposed on ~~such~~ the medically necessary treatment if performed or authorized by any other duly licensed physician."

Sec. 42. G.S. 58-50-65(d) reads as rewritten:

"(d) The provisions of ~~Articles 50 through 55 of this Chapter contained in subdivision (5) of G.S. 58-51-5, and clauses (2), (3), (8), and (12) of G.S. 58-251~~ G.S. 58-51-5(5) and G.S. 58-51-15(a)(1), (4), and (10) may be omitted from railroad ticket policies sold only at railroad stations or at railroad ticket offices by railroad employees."

Sec. 43. G.S. 58-51-115(a) reads as rewritten:

"(a) As used in this section and in G.S. 58-51-120 and G.S. 58-51-125:

(1) 'Health benefit plan' means any accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement. 'Health benefit plan' does not mean a Medicare supplement policy as defined in G.S. 58-54-1(5).

(2) 'Health insurer' means any health insurance company subject to Articles 1 through 63 of this Chapter, including a multiple employee welfare arrangement, and any corporation subject to Articles 65 and 67 of this Chapter; and means a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974."

Sec. 44. G.S. 108A-69(a) reads as rewritten:

"(a) As used in this section and in G.S. 108A-70:

(1) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement. 'Health benefit plan' does not mean a Medicare supplement policy as defined in G.S. 58-54-1(5).

(2) 'Health insurer' means any health insurance company subject to Articles 1 through 63 of Chapter 58 of the General Statutes, including a multiple employee welfare arrangement, and any corporation subject to Articles 65 and 67 of Chapter 58 of the General Statutes; and means a group health plan, as defined in Section 607(1) of the Employee Retirement Income Security Act of 1974."

Sec. 45. G.S. 58-57-5 reads as rewritten:

"§ *58-57-5. Definitions.*

As used in this Article, unless the context requires otherwise, the following words or terms shall have the meanings herein ascribed to them, respectively:

(1) Repealed by Session Laws 1991, c. 720, s. 6.

(2) 'Credit accident and health insurance' means insurance on a debtor to provide indemnity for payments becoming due on a

specific loan or other credit transaction as defined in ~~G.S. 58-51-100;~~ G.S. 58-51-100.

(2a) 'Credit insurance agent' means an agent of an insurance company licensed in this State who is authorized to solicit, negotiate or effect credit life insurance, credit accident and health insurance, credit unemployment insurance, credit property insurance, or any of them, but only to the extent as is authorized and limited in this ~~Article;~~ Article.

(3) 'Credit life insurance' means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction as defined in ~~G.S. 58-58-10;~~ G.S. 58-58-10.

(4) Recodified as G.S. § 58-57-5(2a) (See Note.)

(4a) 'Credit transaction' means any transaction by the terms of which the repayment of money loaned or loan commitment made, or payment for goods, services, or properties sold or leased, is to be made at a future date or ~~dates;~~ dates.

(4b) 'Credit unemployment insurance' means insurance on a debtor in connection with a specified loan or other credit transaction to provide payment to a creditor of the debtor for the installment payments or other periodic payment becoming due while the debtor is involuntarily unemployed as defined in the ~~policy;~~ policy.

(5) 'Creditor' means any lender of money or vendor or lessor of goods, services, property, rights or privileges, including any person that directly or indirectly provides credit in connection with any such sale or lease, for which payment is arranged through a credit-related transaction; or any successor to the right, title or interest of any such lender, vendor, lessor, or person extending credit, and an affiliate, associate, or subsidiary of any of them, or any director, officer, or employee of any of them or any other person in any way associated with any of ~~them;~~ them.

(6) 'Debtor' means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit ~~transaction;~~ transaction.

(7) 'Indebtedness' means the total amount payable for the term of the loan by debtor to creditor in connection with a loan or other credit transaction, including principal, interest, allowable charges, and any premiums authorized ~~hereunder;~~ hereunder.

(7a) 'Joint accident and health coverage' means credit accident and health insurance covering two or more debtors; provided that only one monthly benefit, as defined in G.S. 58-57-15(b), shall be payable each month on a specific indebtedness regardless of the number of debtors ~~insured;~~ insured.

(8) 'Joint life coverage' means credit life insurance covering two or more lives, the entire amount of insurance being payable upon the death of the first insured debtor to ~~die;~~ die.

(9) 'Lease' means a contract whereby the lessee of a 'motor vehicle,' as defined in G.S. 20-4.01(23), contracts to pay as compensation for use a sum substantially equivalent to or in excess of the

aggregate value of the property, but not exceeding the term of years in G.S. 58-57-1.

(10) 'Open-end credit' means credit extended by a creditor under an agreement in which:

a. The creditor reasonably contemplates repeated transactions;

b. The creditor imposes a finance charge from time to time on an outstanding unpaid balance; and

c. The amount of credit that may be extended to the debtor during the term of the agreement (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

'Open-end credit' includes credit card balances.

(11) 'Truncated coverage' means a credit insurance benefit with a term of insurance coverage that is less than the term of the credit ~~transaction;~~ transaction."

Sec. 46. G.S. 58-58-110(c) reads as rewritten:

"(c) ~~Nothing contained herein shall be construed to allow any insurer admitted to transact insurance in this State~~ This section does not allow an insurer to withhold payment of money payable under ~~a life or accident insurance~~ any policy providing a death benefit ~~issued in this State~~ to any beneficiary for a period longer than reasonably necessary to determine whether benefits are payable and ~~thereafter~~ to transmit ~~such~~ the payment."

Sec. 47. G.S. 58-62-41(e) reads as rewritten:

"(e) Assessments for funds to meet the requirements of the Association with respect to a delinquent insurer shall not be made until necessary to implement the purposes of this Article. Classification of assessments under subsection (b) of this section and computation of assessments under this subsection shall be made with a reasonable degree of ~~accuracy,~~ accuracy, recognizing that exact determinations may not always be possible."

Sec. 48. G.S. 58-62-41(f) reads as rewritten:

"(f) The Association may abate or defer, in whole or in part, the assessment of a member insurer if, in the Board's opinion, payment of the assessment would endanger the member insurer's ability to fulfill its contractual obligations. If an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this ~~section, recognizing that exact determinations may not always be possible,~~ section."

Sec. 49. G.S. 58-63-25(a) reads as rewritten:

"(a) ~~Whenever~~ When the Commissioner ~~shall have~~ has reason to believe that any ~~such~~ person has been engaged or is engaging in this State in any unfair method of competition or any unfair or deceptive act or practice defined in ~~G.S. 58-63-15,~~ G.S. 58-63-15 or under G.S. 58-63-65, and that a proceeding by ~~him in respect thereto~~ the Commissioner on the matter would be ~~to~~ in the interest of the public, ~~he~~ the Commissioner shall issue and serve upon ~~such~~ the person a statement of the charges in that respect and a notice of the hearing ~~thereon~~ on the matter to be held at the time and place fixed in the notice, which shall not be less than 10 days after the date of the service ~~thereof.~~ of the notice."

Sec. 50. G.S. 58-63-35(a) reads as rewritten:

"(a) Any person required by an order of the Commissioner under ~~G.S. 58-63-30~~ G.S. 58-63-32 to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in G.S. 58-63-15 may obtain a review of ~~such~~ the order by filing in the Superior Court of Wake County, within 30 days from the date of the service of such order, a written petition praying that the order of the Commissioner be set aside. A copy of ~~such~~ the petition shall be ~~forthwith~~ immediately served upon the Commissioner, and ~~thereupon~~ at that time the Commissioner ~~forthwith~~ immediately shall certify and file in ~~such~~ the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the Commissioner. Upon ~~such~~ the filing of the petition and ~~transcript such~~ transcript, the court ~~shall have~~ has jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of ~~such~~ the petition shall operate as a stay of ~~such order of the Commissioner,~~ the Commissioner's order, and ~~shall have~~ has power to make and enter upon the pleadings, evidence, and proceedings set forth in ~~such~~ the transcript a decree modifying, affirming or reversing the order of the Commissioner, in whole or in part. The findings of the Commissioner as to the facts, if supported by substantial evidence, ~~shall be~~ are conclusive."

Sec. 51. G.S. 58-63-50 reads as rewritten:

"*§ 58-63-50. Penalty.*

Any person who willfully violates a cease and desist order of the Commissioner under ~~G.S. 58-63-30,~~ G.S. 58-63-32, after it has become final, and while ~~such~~ the order is in effect, shall forfeit and pay to the Commissioner for the use of the public schools of the county or counties in which the act or acts complained of occurred the sum of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) for each violation, which if not paid shall be recovered in a civil action instituted in the name of the Commissioner in the Superior Court of Wake County."

Sec. 52. G.S. 58-64-33(a) reads as rewritten:

"(a) All continuing care facilities shall maintain after opening: operating reserves equal to fifty percent (50%) of the total operating costs projected for the 12-month period following the period covered by the most recent annual statement filed with the Department. The forecast statements as required by G.S. 58-64-20(a)(12) shall serve as the basis for computing the operating reserve. In addition to total operating expenses, total operating costs will include debt service, consisting of principal and interest payments along with taxes and insurance on any mortgage loan or other long-term financing, but will exclude depreciation, amortized expenses, and extraordinary items as approved by the Commissioner. If the debt service portion is accounted for by way of another reserve account, the debt service portion may be excluded. Facilities that maintain an occupancy level in excess of ninety percent (90%) shall only be required to maintain twenty-five percent (25%) operating reserve upon approval of the Commissioner, unless otherwise instructed by the Commissioner. The operating reserves may be funded by cash, by invested cash, or by investment grade securities, including bonds,

stocks, U.S. Treasury obligations, or obligations of U.S. government agencies."

Sec. 53. G.S. 58-64-55 reads as rewritten:

"*§ 58-64-55. Examinations; financial statements.*

The Commissioner or ~~his~~ the Commissioner's designee may, in the Commissioner's discretion, visit a facility offering continuing care in this State to examine its books and records. Expenses incurred by the Commissioner in conducting examinations under this section shall be paid by the facility examined. The provisions of ~~G.S. 58-2-130, 58-2-135, 58-2-140,~~ G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, and 58-6-5 apply to this Article and are hereby incorporated by reference."

Sec. 54. G.S. 58-64-70(c) reads as rewritten:

"(c) A person may not file or maintain an action under this section if the person, before filing the action, received a written offer of a refund of all amounts paid the provider, facility, or person violating this Article together with interest at the rate established monthly by the Commissioner of Banks pursuant to ~~G.S. 24-1.1(3),~~ G.S. 24-1.1(c), less the current contractual value of care and lodging provided prior to receipt of the offer, and if the offer recited the provisions of this section and the recipient of the offer failed to accept it within 30 days of actual receipt."

Sec. 55. The heading of Part 2 of Article 65 of Chapter 58 of the General Statutes reads as rewritten:

"Part 2. Indemnification."

Sec. 56. G.S. 58-65-172(1) reads as rewritten:

"(1) An officer of the corporation is entitled to mandatory indemnification under ~~G.S. 58-56-168~~ G.S. 58-65-168 and is entitled to apply for court-ordered indemnification under G.S. 58-65-170, in each case to the same extent as a director;".

Sec. 57. G.S. 58-66-30(a) reads as rewritten:

"(a) No insurer may make, issue, amend or renew any certificate or contract after the dates specified in G.S. 58-66-35 for the applicable type of insurance unless the certificate is in compliance with the provisions of G.S. 58-66-20 and 58-66-25, and unless the certificate is filed with the Commissioner for ~~his~~ this approval. The policy will be deemed approved 90 days after filing unless disapproved within the 90-day period. The ~~Commission~~ Commissioner may not unreasonably withhold ~~his~~ this approval. Any disapproval must be delivered to the insurer in writing and must state the grounds for disapproval. Any certificate filed with the Commissioner must be accompanied by a certified Flesch scale readability analysis and test score and by the insurer's certification that the policy is, in the insurer's judgment, readable based on the factors specified in G.S. 58-66-20 and 58-66-25."

Sec. 58. G.S. 58-66-35 reads as rewritten:

"*§ 58-66-35. Application to policies; dates; duties of the Commissioner.*

~~(a)~~ The filing requirements of G.S. 58-66-30 apply to all subscribers' contracts of hospital, medical, and dental service corporations as described in G.S. 58-65-60(a) and (b) that are made, issued, amended or renewed after ~~July 1, 1983; and~~ July 1, 1983.

~~(b) The Commissioner must make the following reports to the Legislative Research Commission and the General Assembly:~~

~~(1) On or before March 31, 1980, a report detailing and evaluating the efforts made by the Commissioner and insurers to implement the provisions of subdivision (a)(1) of this section, and particularly examining the feasibility and practicality of requiring certificates to comply with the provisions of this Article and in the time prescribed;~~

~~(2) On or before March 31, 1981, a report detailing and evaluating:~~

~~a. The operation of and the extent of compliance with the provisions of this Article;~~

~~b. The efforts made by the Commissioner and insurers to implement the provisions of subdivision (a)(2) of this section.~~"

Sec. 59. G.S. 58-67-50(c) reads as rewritten:

"(c) The Commissioner shall, within a reasonable period, approve any form if the requirements of ~~paragraph (1)~~ subsection (a) of this section are met and any schedule of premiums if the requirements of ~~paragraph (2)~~ subsection (b) of this section are met. It shall be unlawful to issue the form or to use the schedule of premiums until approved. If the Commissioner disapproves the filing, the Commissioner shall notify the filer. In the notice, the Commissioner shall specify the reasons for disapproval. A hearing will be granted within 30 days after a request in writing by the person filing. If the Commissioner does not approve or disapprove any form or schedule of premiums within 90 days after the filing for forms and within 60 days after the filing for premiums, they shall be deemed to be approved."

Sec. 60. G.S. 58-68A-1(4) reads as rewritten:

"(4) Focus health care reform upon improving health status and the included health care."

Sec. 61. G.S. 58-68A-10(1) reads as rewritten:

"(1) Financing. -- A method or methods of financing the Plan shall be recommended by the Commission. The system ~~which~~ will ensure that every North Carolina citizen has access to affordable health care, regardless of the resources of the community in which ~~he~~ the citizen resides."

Sec. 62. G.S. 58-68A-10(5) reads as rewritten:

"(5) Administration. -- The Plan may be administered through regional health plan purchasing cooperatives that will:

a. Certify private health plans as community health plans for participation in the system of universal health coverage on the basis of ability to deliver the State-guaranteed package of comprehensive, medically necessary health services in accordance with criteria defined by the Commission for quality and service. All community health plans meeting certification requirements will be certified.

b. Pay each community health plan the same risk-adjusted per capita amount for all eligible persons, except that the Commission shall have the authority to ensure accessibility to health care in rural and medically underserved areas by

enhancing provider payments, requiring an accountable health plan to provide services throughout the area, or by any other reasonable means.

c. Ensure that no community health plan that charges an additional premium shall charge an eligible resident a higher premium than that charged to any other eligible resident for the same accountable health plan.

d. Except in underserved areas in which the regional health plan purchasing cooperative determines that there are insufficient providers to support more than one community health plan, ensure that all eligible residents have a choice of at least two community health plans that will provide the State-guaranteed package of comprehensive, medically necessary health services for no additional premium above that paid on their behalf by the regional health plan purchasing cooperative.

e. Assist eligible residents in choosing among community health plans by providing consumer education, including uniform information about all the community health plans available through the health plan purchasing cooperative such as quality indicators and choice of providers.

f. Provide a mechanism for enrolling all eligible residents in their chosen community health plans and for automatically enrolling in a community health plan all eligible residents who fail to choose such a plan.

g. ~~The~~ Determine the number, organization, and geographic areas of the regional health plan purchasing cooperatives to be established, which will include at least six geographic areas. Each area is to be defined so that it is self-sufficient in providing comprehensive health care including most tertiary services, thus allowing for a large enough population to support community rating.

h. Monitor and enforce standards concerning access, consumer satisfaction, and quality of health care in all community health plans.

i. Jointly with the Commission and the North Carolina Medical Database Commission, collect data from all community health plans and sponsor research into health outcomes and practice guidelines.

j. Jointly with the Commission and where necessary to meet the needs of underserved areas or special populations, organize the delivery of health care.

k. Receive bids annually from private health plans to provide the benefit package established by the Commission to enrolled eligible residents. A health plan purchasing cooperative may reject any or all bids, and may request that revised bids be submitted."

Sec. 63. G.S. 58-68A-10(6) reads as rewritten:

"(6) Large Groups. -- In order to preserve employer-based and other group health care coverage, the Plan may provide, notwithstanding

any other provision of this Article, for the direct marketing by community health plans to an employer with 100 or more employees and to any other group with 100 or more members, provided that the employer or group is eligible under G.S. 58-51-80 for group accident, group health, or group accident and health insurance. If the Plan provides for direct marketing of insurance to large groups as defined in this ~~subsection,~~ subdivision, it shall also address the extent to which those groups and self-insured plans (prior to obtaining an ERISA waiver) should be subject to the certification requirements for community health plans, whether exemptions, tax credits, or other means are necessary and appropriate to provide for equitable treatment of large groups and self-insured groups under any tax-financed system of universal health care coverage, and other issues involving the use of large group coverage with universal coverage. The regional health plan purchasing cooperatives would be responsible for marketing community health plans to individuals and all other groups. Before the plan provides for direct marketing to large groups, the Commission shall study whether there are any adverse affects to the purchasing arrangements in effect for other residents, the impact on portability of coverage, and the role large employers play in financing coverage for the uninsured and indigent populations."

Sec. 64. G.S. 97-93(d) reads as rewritten:

"(d) Groups comprising two or more employers who agree to pool their liabilities under subdivision (a)(2) of this section are subject to ~~G.S. 58-3-80,~~ G.S. 58-3-81, 58-7-50, 58-7-55, 58-7-140, 58-7-160, 58-7-162, 58-7-163, ~~58-7-165,~~ 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-177, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, ~~58-7-190,~~ 58-7-192, 58-7-193, 58-7-195, 58-7-197, 58-7-200, and Articles 13, 19, and 34 of Chapter 58 of the General Statutes."

Sec. 65. G.S. 105-228.4 reads as rewritten:

"*§ 105-228.4. Annual ~~registration~~ license fees for insurance companies.*

(a) As a condition precedent to doing business in this State, an insurance company must apply for and obtain a ~~certificate of registration~~ license from the Commissioner of Insurance by March 1 of each year. The ~~certificate~~ license shall become effective the following July 1 and shall remain in effect for one year. Except as provided in subsections (b) and (c) of this section, the insurance company shall pay an annual fee for the ~~certificate~~ license as follows:

For each domestic farmer's mutual assessment fire insurance company	$ 25.00
For each fraternal order	100.00
For each of all other insurance companies, except mutual burial associations taxed under G.S. 105-121.1	500.00

The fees levied in this subsection shall be in addition to those specified in G.S. 58-6-5.

(b) When the paid-in capital stock and/or surplus of an insurance company other than a farmer's mutual assessment company or a fraternal order does not exceed one hundred thousand dollars ($100,000), the fee levied in this section shall be one half the amount above specified.

(c) Upon payment of the fee specified above and the fees and taxes elsewhere specified each insurance company, exchange, bureau, or agency, shall be entitled to do the types of business specified in Chapter 58, of the General Statutes of North Carolina as amended, to the extent authorized therein, except that: Insurance companies authorized to do either the types of business specified for (i) life insurance companies, or (ii) for fire and marine companies, or (iii) for casualty and fidelity and surety companies, in G.S. 58-7-75, which shall also do the types of business authorized in one or both of the other of the above classifications shall in addition to the fees above specified pay one hundred dollars ($100.00) for each such additional classification of business done.

(d) Any rating bureau established by action of the General Assembly of North Carolina shall be exempt from the fees above levied."

Sec. 66. G.S. 143-215.94I(g) reads as rewritten:

"(g) Each pool shall be audited annually at the expense of the pool by a certified public accounting firm, with a copy of the report available to the governing body or chief executive officer of each member of the pool and to the Commissioner. The board of trustees of the pool shall obtain an appropriate actuarial evaluation of the loss and loss adjustment expense reserves of the pool, including an estimate of losses and loss adjustment expenses incurred but not reported. The provisions of ~~G.S. 58-2-130,~~ G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, and 58-6-5 apply to each pool and to persons that administer ~~such~~ the pools. Annual financial statements required by G.S. 58-2-165 shall be filed by each pool within 60 days after the end of the pool's fiscal year. All financial statements required by this section shall be prepared in accordance with generally accepted statutory accounting principles."

Sec. 67. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part declared to be unconstitutional or invalid.

Sec. 68. Except as otherwise provided herein, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of June, 1995.

S.B. 483 **CHAPTER 194**

AN ACT TO REQUIRE THE INSPECTION OF BISON MEAT THAT IS TO BE USED AS FOOD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-549.15(13) reads as rewritten:

"(13) 'Meat broker' means any person, firm, corporation engaged in the business of buying or selling carcasses, parts of carcasses, meat, or meat food products of cattle, sheep, swine, goats, bison, horses, mules, or other equines on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person, firm, or corporation."

Sec. 2. G.S. 106-549.15(14) reads as rewritten:

"(14) 'Meat food product' means any product capable of use as human food ~~which~~ that is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, goats, bison, or fallow deer, excepting products ~~which~~ that contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and ~~which~~ that are exempted from definition as a meat food product by the Board under such conditions as it may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this subdivision with respect to cattle, sheep, swine, ~~and goats,~~ goats, and bison."

Sec. 3. G.S. 106-549.17 reads as rewritten:

"*§ 106-549.17. Inspection of animals before slaughter; humane methods of slaughtering.*

(a) For the purpose of preventing the use in intrastate commerce, as hereinafter provided, of meat and meat food products which are adulterated, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, goats, fallow deer, bison, horses, mules, and other equines before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment in this State in which slaughtering and preparation of meat and meat food products of such animals are conducted for intrastate commerce; and all cattle, sheep, swine, goats, fallow deer, bison, horses, mules, and other equines found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, fallow deer, bison, horses, mules, or other equines, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats, fallow deer, bison, horses, mules, or other equines shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Board as herein provided for.

(b) For the purpose of preventing the inhumane slaughtering of livestock, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the method by which cattle, sheep, swine, goats, fallow deer, bison, horses, mules, and other equines are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this law. The Commissioner may refuse to

provide inspection to a new slaughtering establishment or may cause inspection to be temporarily suspended at a slaughtering establishment if the Commissioner finds that any cattle, sheep, swine, goats, fallow deer, bison, horses, mules, or other equines have been slaughtered or handled in connection with slaughter at such establishment by any method not in accordance with subsection (c) of this section until the establishment furnishes assurances satisfactory to the Commissioner that all slaughtering and handling in connection with slaughter of livestock shall be in accordance with such a method.

(c) Either of the following two methods of slaughtering of livestock and handling of livestock in connection with slaughter are found to be humane:

(1) In the case of cattle, calves, fallow deer, bison, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or

(2) By slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering."

Sec. 4. G.S. 106-549.18 reads as rewritten:

"*§ 106-549.18. Inspection; stamping carcass.*

For the purposes hereinbefore set forth the Commissioner shall cause to be made by inspectors appointed for that purpose, as hereinafter provided, a post mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, goats, fallow deer, bison, horses, mules, and other equines, capable of use as human food, to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in this State in which such articles are prepared for intrastate commerce; and the carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled, as 'Inspected and Passed'; and said inspectors shall label, mark, stamp, or tag as 'Inspected and Condemned,' all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to [do] so destroy any such condemned carcass or part thereof."

Sec. 5. G.S. 106-549.19 reads as rewritten:

"*§ 106-549.19. Application of Article; place of inspection.*

The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, goats, fallow deer, bison, horses, mules, and other equines or the meat or meat products thereof, capable of use as human food, which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where inspection under this Article is maintained, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products which, after having been issued from any such slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The Commissioner or his authorized representative may limit the entry of carcasses, part of carcasses, meat and meat food products, and other materials into any establishment at which inspection under this Article is maintained, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this and the subsequent Article."

Sec. 6. G.S. 106-549.22 reads as rewritten:

"*§ 106-549.22. Rules and regulations of Board.*

The Commissioner or his authorized representative shall cause to be made, by experts in sanitation, or by other competent inspectors, such inspection of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, goats, fallow deer, bison, horses, mules, and other equines are slaughtered and the meat and meat food products thereof are prepared for intrastate commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and the Board shall prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, the Commissioner or his authorized representative shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as 'North Carolina Department of Agriculture Inspected and Passed.'"

Sec. 7. G.S. 106-549.23 reads as rewritten:

"*§ 106-549.23. Prohibited slaughter, sale and transportation.*

No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, fallow deer, bison, horses, mules, or other equines, or any carcasses, parts of carcasses, meat or meat food products of any such animals:

(1) Slaughter any of these animals or prepare any of these articles which are capable of use as human food, at any establishment preparing any such articles for intrastate commerce except in compliance with the requirements of this and the subsequent Article;

(2) Slaughter, or handle in connection with slaughter, any such animals in any manner not in accordance with G.S. 106-549.17(c) of this Article;
(3) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce:
a. Any of these articles which (i) are capable of use as human food and (ii) are adulterated or misbranded at the time of sale, transportation, offer for sale or transportation, or receipt for transportation; or
b. Any articles required to be inspected under this Article unless they have been so inspected and passed; or
(4) Do, with respect to any of these articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing the articles to be adulterated or misbranded."

Sec. 8. G.S. 106-549.25 reads as rewritten:

"*§ 106-549.25. Slaughter, sale and transportation of equine carcasses.*

No person, firm, or corporation shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the Board to show the kinds of animals from which they were derived. When required by the Commissioner or his authorized representative, with respect to establishments at which inspection is maintained under this Article, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which cattle, sheep, swine, fallow deer, bison, or goats are slaughtered or their carcasses, parts thereof, meats or meat food products are prepared."

Sec. 9. G.S. 106-549.26 reads as rewritten:

"*§ 106-549.26. Inspection of establishment; bribery of or malfeasance of inspector.*

The Commissioner or his authorized representative shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, goats, fallow deer, bison, horses, mules, and other equines the inspection of which is hereby provided for, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this and the subsequent Article and by the rules and regulations to be prescribed by said Board and said Board shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this and the subsequent Article, and all inspections and examinations made

under this Article shall be such and made in such manner as described in the rules and regulations prescribed by said Board not inconsistent with the provisions of this Article and as directed by the Commissioner or his authorized representative. Any person, firm, or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, or any other officer or employee of this State authorized to perform any of the duties prescribed by this and the subsequent Article or by the rules and regulations of the Board or by the Commissioner or his authorized representative any money or other thing of value, with intent to influence said inspector, or other officer or employee of this State in the discharge of any duty herein provided for, shall be deemed guilty of a Class I felony which may include a fine not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000); and any inspector, or other officer or employee of this State authorized to perform any of the duties prescribed by this Article who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a Class I felony and shall, upon conviction thereof, be summarily discharged from office and may be punished by a fine not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000)."

Sec. 10. G.S. 106-549.27(a) reads as rewritten:

"(a) The provisions of this Article requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations shall not

(1) Apply to the slaughtering by any person of animals of his own raising, and the preparation by him and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor

(2) To the custom slaughter by any person, firm, or corporation of cattle, sheep, swine, fallow deer, bison, or goats delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him, and members of his household and his nonpaying guests and employees: Provided, that all carcasses, parts thereof, meat and meat food products derived from custom slaughter shall be identified as required by the Commissioner, during all phases of slaughtering, chilling, cooling, freezing, packing, meat canning, rendering, preparation, storage and transportation; provided further, that the custom slaughterer does not engage in the business of buying or selling any carcasses, parts thereof, meat or meat food products of any cattle, sheep, swine, goats, fallow deer, bison, or equines, capable of use as human food, unless the

carcasses, parts thereof, meat or meat food products have been inspected and passed and are identified as having been inspected and passed by the Commissioner or the United States Department of Agriculture."

Sec. 11. G.S. 106-549.28 reads as rewritten:

"*§ 106-549.28. Regulation of storage of meat.*

The Board may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, goats, fallow deer, bison, horses, mules, or other equines, capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the Board deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Willful violation of any such regulation is a Class 2 misdemeanor."

Sec. 12. G.S. 106-549.39(b) reads as rewritten:

"(b) ~~Ratite~~ Inspection Fees. -- The Commissioner may establish a fee at an hourly rate to be paid by an establishment preparing ~~ostriches or other ratites~~ an animal listed in this subsection as a meat food product. The fee shall be credited to the Department as a departmental receipt and applied to the cost of inspecting ~~ostriches and other ratites.~~ these animals to be used for food. The animals whose inspection is subject to the fee imposed under this subsection are:

(1) Bison.

(2) Ostriches and other ratites."

Sec. 13. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of June, 1995.

H.B. 135 **CHAPTER 195**

AN ACT TO MAKE CONFIDENTIAL ALL PHOTOGRAPHIC IMAGES AND SIGNATURES RECORDED BY THE DIVISION OF MOTOR VEHICLES FOR DRIVERS LICENSES AND SPECIAL IDENTIFICATION CARDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-43(a) reads as rewritten:

"(a) All records of the Division, other than those declared by law to be confidential for the use of the Division, shall be open to public inspection during office hours. A photographic image or signature recorded in any format by the Division for a drivers license or a special identification card is confidential and shall not be released except for law enforcement purposes."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of June, 1995.

H.B. 507 CHAPTER 196

AN ACT TO PROVIDE THAT THE LAWS RELATING TO MOTOR VEHICLES APPLY ON STREETS OWNED BY THE COLINGTON HARBOUR ASSOCIATION, INC., IN DARE COUNTY, AND TO PROVIDE THAT THE TOWN OF MANTEO MAY REGULATE NOISE IN THE ATLANTIC OCEAN AND OTHER WATERWAYS ADJACENT TO THAT PORTION OF THE TOWN WITHIN ITS BOUNDARIES OR WITHIN ITS EXTRATERRITORIAL JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. The provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles are applicable to the drives, driveways, roads, roadways, streets, courts, extensions, alleys, and parking lots, by whatever name known, on the properties owned by or under the control of The Colington Harbour Association, Inc., and shown on the several plats recorded in the office of the Register of Deeds of Dare County. For purposes of this act, drives, driveways, roads, roadways, streets, courts, extensions, alleys, and parking lots, by whatever name known shall have the same meaning as highways and public vehicular areas pursuant to G.S. 20-4.01. A violation of any of those laws is punishable as prescribed by those laws.

Sec. 2. This act shall not be construed as in any way interfering with the ownership and control of the drives, driveways, roads, roadways, streets, courts, extensions, alleys, and parking lots, by whatever name known, of The Colington Harbour Association, Inc., nor does this require the removal of the private guard gate belonging to the Association.

Sec. 3. The speed limits shall be the same as those in effect at the time of ratification of this act and contained on a list in the office of the Dare County Board of Commissioners. Any proposed change in the speed limits shall be submitted to and approved by the Dare County Board of Commissioners pursuant to G.S. 20-141.

Sec. 4. Section 2 of Chapter 84 of the 1995 Session Laws reads as rewritten:

"Sec. 2. This act applies to the Towns of Kill Devil Hills, Kitty Hawk, Manteo, Nags Head, and Southern Shores only."

Sec. 5. This act applies only to Dare County.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of June, 1995.

H.B. 546 CHAPTER 197

AN ACT TO PERMIT ONE-STOP VOTING ON DIRECT RECORD VOTING EQUIPMENT WITH RETRIEVABLE BALLOTS AND TO ALLOW CENTRAL COUNTING OF CURBSIDE BALLOTS IN GASTON, GUILFORD, MECKLENBURG, AND UNION COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 163-227.2, if a direct record voting system with retrievable ballots is approved by the State Board of Elections under the provisions of G.S. 163-160 for use by a county, that county may use that voting system for ballots cast under G.S. 163-227.2 under rules approved by the State Board of Elections.

Sec. 2. Notwithstanding the provisions of G.S. 163-155, if a direct record voting system is approved by the State Board of Elections under the provisions of G.S. 163-160 for use by a county, that county's board of elections may require, according to rules which shall be adopted by the State Board of Election, that paper ballots used in curbside voting under G.S. 163-155 be transported to the county board of elections to be counted centrally rather than at the voting place.

Sec. 3. This act applies only to Gaston, Guilford, Mecklenburg, and Union Counties.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of June, 1995.

H.B. 603 **CHAPTER 198**

AN ACT TO REMOVE THE SUNSET ON THE AUTHORIZATION FOR ALAMANCE COUNTY TO ENTER INTO A CONTRACT TO REPAIR THE ALAMANCE COUNTY COURTHOUSE AND TO PROVIDE THAT THE COUNTY OF EDGECOMBE MAY USE THE DESIGN/BUILD DELIVERY SYSTEM FOR THE CONSTRUCTION OF A COUNTY DETENTION FACILITY.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 153 of the 1993 Session Laws reads as rewritten:

"Sec. 5. This act is effective upon ratification and shall expire on ~~June 30, 1995.~~ June 30, 1998."

Sec. 2. Due to the threat of a legal action and given the scarcity of time and money, the County of Edgecombe may use the design/build delivery system with single liability for design and construction of a county detention facility.

Sec. 3. This act is effective upon ratification. Section 2 of this act expires upon the completion of the Edgecombe County detention facility construction project.

In the General Assembly read three times and ratified this the 7th day of June, 1995.

S.B. 277 **CHAPTER 199**

AN ACT TO REMOVE THE FIFTY ACRE LIMITATION ON CONDEMNING PROPERTY FOR A SCHOOL SITE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-517 reads as rewritten:

"*§ 115C-517. Acquisition of sites.*

Local boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the local school administrative unit; but no school may be operated by a local school administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the local school administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a parking area or access road suitable for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of Chapter 40A of the General Statutes, and the determination of the local board of education of the land necessary for such purposes shall be ~~conclusive: Provided, that not more than a total of 50 acres shall be acquired by condemnation for any one site for a schoolhouse or other school facility as aforesaid.~~ conclusive."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1995.

S.B. 481 **CHAPTER 200**

AN ACT TO ALLOW THE LENOIR COUNTY BOARD OF EDUCATION TO BUILD A CENTRAL OFFICE FACILITY ON LAND LEASED FROM THE STATE OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 115C-521(d), the Lenoir County Board of Education may provide for the erection or repair of a central office facility on a site that is leased by the Board of Education from the State for a term of not less than 50 years.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1995.

S.B. 579 **CHAPTER 201**

AN ACT TO AUTHORIZE THE CLEVELAND COUNTY BOARD OF EDUCATION TO DISPOSE OF CERTAIN PROPERTY AT PRIVATE SALE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 115C-518(a) or Article 12 of Chapter 160A of the General Statutes, the Cleveland County Board of Education may convey at private negotiation and sale, with monetary consideration, any or all of its right, title, and interest to the tract of land on which Dover Elementary School was situated.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1995.

S.B. 643 **CHAPTER 202**

AN ACT TO PROVIDE FOR PRIOR NOTICE OF SEWER SYSTEM MORATORIA TO THE AFFECTED UNIT OF GOVERNMENT AND TO THE PUBLIC.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.67 reads as rewritten:

"§ *143-215.67. Acceptance of wastes to disposal systems and air-cleaning devices.*

(a) No person subject to the provisions of G.S. 143-215.1, 143-215.108, or 143-215.109 shall willfully cause or allow the discharge of any wastes or air contaminants to a waste-disposal system or air-cleaning device in excess of the capacity of the disposal system or cleaning device or any wastes or air contaminants which the disposal system or cleaning device cannot adequately treat. This subsection does not prohibit the discharge of waste to a treatment works operated by a public utility or unit of local government in excess of the capacity of the treatment works by any person who holds a valid building permit issued prior to the date on which the public utility or unit of local government receives the notice required by subsection (c) of this section if the Commission finds that the discharge of waste will not result in any significant degradation in the quality of the waters ultimately receiving the discharge as provided in subsection (b) of this section.

(b) The Commission may authorize a unit of government subject to the provisions of ~~G.S. 143-215.67(a)~~ subsection (a) of this section to accept additional wastes to its waste-disposal system upon a finding by the Commission (i) that the unit of government has secured a grant or has otherwise secured financing for planning, design, or construction of a new or improved waste disposal system which will adequately treat the additional waste, and (ii) the additional waste will not result in any significant degradation in the quality of the waters ultimately receiving ~~such~~ the discharge. The Commission may impose such conditions on permits issued under G.S. 143-215.1 as it deems necessary to implement the provisions of this subsection, including conditions on the size, character, and number of additional dischargers. Nothing in this subsection shall be deemed to authorize a unit of government to violate water quality standards, effluent limitations or the terms of any order or permit issued under Part 1 of this Article nor does anything herein preclude the Commission from enforcing by appropriate means the provisions of Part 1 of this Article.

(c) The Commission may impose a moratorium on the addition of waste to a treatment works if the Commission determines that the treatment works is not capable of adequately treating additional waste. The Commission shall give notice of its intention to impose a moratorium at least 45 days prior to the effective date of the moratorium to any person who holds a permit for a treatment works subject to the moratorium. Except to the extent that the provisions of subsection (b) of this section apply, the Commission shall not

issue a permit for a sewer line that will connect to a treatment works that the Commission has determined to be incapable of treating additional waste from the date on which the Commission determines that the treatment works is incapable of adequately treating additional waste until the moratorium on the addition of waste to the treatment works is lifted.

(d) A public utility or unit of local government that operates a treatment works shall give notice of a moratorium on the discharge of additional waste to the treatment works within 15 days of the date on which the public utility or unit of local government receives notice of the moratorium from the Commission. The public utility or unit of local government shall give public notice of a moratorium by publication of the notice one time in a newspaper having general circulation in the county in which the treatment works is located. The Commission shall prescribe the form and content of the notice."

Sec. 2. This act becomes effective 1 October 1995.

In the General Assembly read three times and ratified this the 8th day of June, 1995.

S.B. 699 **CHAPTER 203**

AN ACT TO ALLOW THE TOWN OF RED SPRINGS TO SELL AT PRIVATE SALE A PARCEL OF PROPERTY DONATED TO THE TOWN.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the Town of Red Springs may convey by private sale, with or without monetary consideration, any or all of its right, title, and interest in the following described property:

Lying and being in Red springs Township, Robeson County, along the southwest corporate limit lines of the Town of Red Springs, opposite the intersection of Mercer Street with Graham Street, on the southwest side of Graham Street, and on the northwest side of Hancock Street. This tract is bounded on the northeast by Graham Street, on the southeast by Hancock Street, David A. Horne, Lester Horne, Walter A. Quick, Algenia McPhaul, Gary Welsh, Frances H. Singh, Jean Lewis Flowers, and other lands of Milliken and Company, on the southwest by other lands of Milliken and Company, on the northwest by E. H. Alexander, Flora Gilchrest Estate lands, and other lands of Milliken and Company, and being more particularly described as follows:

BEGINNING at a point in the concrete curb and gutter section where the northwest right-of-way (15 feet from center) of Hancock Street (formerly Second Street) intersects the southwestern right-of-way (25 feet from center) of Graham Street, and runs thence as the northwest right-of-way line of Hancock Street and as a line parallel to and located 2 feet northwest of the back of curb line along the northwestern side of said street, South 64 degrees 19 minutes 50 seconds West 316.54 feet to a point in the concrete curb and gutter section where said right-of-way line intersects the northeastern right-of-way (17.5 feet from center) of Front Street; thence as a

line parallel to and located 4 feet northeast of the back of curb line along the northeastern side of Front Street, North 25 degrees 44 minutes 33 seconds West 214.33 feet to a point in said line -- this point is located South 65 degrees 14 minutes 15 seconds West 1.26 feet from an existing iron pipe -- at the present termination of Front Street; thence along the northwestern line of David A. Horne's lot as described in Deed Book 650, page 436, Robeson County Registry, South 65 degrees 14 minutes 15 seconds West 139.60 feet to a point in the northeast line of the Town of Red Springs water tank lot as recorded in Deed Book 19-K, page 79, Robeson County Registry; thence along the lines of said lot, North 25 degrees 12 minutes 00 seconds West 32.26 feet to a point; thence South 64 degrees 48 minutes 00 seconds West 50.00 feet to a point; thence South 25 degrees 12 minutes 00 seconds East 31.88 feet to a point -- this point is located South 65 degrees 14 minutes 15 seconds West 1.18 feet from an existing iron pipe -- in the southwestern line of said water tank lot; thence along the northwestern line of David A. Horne's lot conveyed by deed recorded in Deed Book 17-B, page 162, Robeson County Registry, South 65 degrees 14 minutes 15 seconds West 97.28 feet to a point in the northeast right-of-way (15 feet from center) of Middle Street; thence as parallel to and located 2 feet northeast of the projected back of curb line along the northeast side of Middle Street, North 25 degrees 26 minutes 14 seconds West 6.61 feet to a point at the present northwest termination of Middle Street; thence to and along the northwestern line of a lot conveyed to Lester Horne by deed recorded in Deed Book 568, page 241, Robeson County Registry, South 63 degrees 37 minutes 26 seconds West (33.52 feet to an existing iron pipe) a total distance of 168.54 feet to an existing iron pipe; thence continuing as the Lester Horne Estate's southwest line, South 26 degrees 22 minutes 34 seconds East 70.01 feet to an existing iron pipe; thence along the northwestern line of Walter A. Quick's lot as conveyed by deed recorded in Deed Book 9-K, page 621, Robeson County Registry, to and along the present northwestern termination line of Beck Street (formerly Back Street), South 63 degrees 42 minutes 47 seconds West (141.88 feet to an existing iron pipe) a total distance of 170.39 feet to a point in the southwest right-of-way (15 feet from center) of Beck Street; thence as a line parallel to and located 2 feet southwest of the projected back of curb line along the southwest side of Beck Street, South 26 degrees 03 minutes 46 seconds East 3.33 feet to a point; thence as the lines of Algenia McPhaul's lot conveyed by deed recorded in Deed Book 797, page 569, Robeson County Registry, South 64 degrees 19 minutes 28 seconds West (1.42 feet to an existing iron pipe) a total distance of 146.30 feet to an existing iron pipe; thence along the southwestern lines of Algenia McPhaul, Gary Welsh, and Frances H. Singh, South 26 degrees 20 minutes 17 seconds East 246.60 feet to an existing iron pipe; thence along the southwest line of Jean Lewis Flowers, South 26 degrees 22 minutes 59 seconds East 89.09 feet to an existing iron pipe; thence as a new line, South 89 degrees 02 minutes 15 seconds West 41.06 feet to an iron rod; thence as a line parallel to and located 3 feet southeast of a chain-link fence, South 55 degrees 57 minutes 57 seconds West 154.89 feet to an iron rod; thence continuing as lines parallel to and located 3 feet southwest of said chain-link fence, North 33 degrees 03 minutes 15 seconds West 133.44 feet to an iron

rod; thence North 24 degrees 27 minutes 25 seconds West 286.46 feet to an iron rod; thence North 89 degrees 32 minutes 35 seconds West 69.72 feet to an iron rod; thence North 58 degrees 44 minutes 12 seconds West 67.71 feet to an iron rod; thence North 28 degrees 12 minutes 50 seconds West 331.84 feet to a point in the original northwestern line; thence as said line, parallel to and located 12.2 feet southeast of the center of the right-of-way of the abandoned railroad, North 64 degrees 53 minutes 06 seconds East 184.84 feet to an iron rod in an existing iron pipe; thence continuing as said original line, North 64 degrees 53 minutes 06 seconds East 1161.14 feet to an existing iron axle; thence continuing as said line, North 64 degrees 53 minutes 06 seconds East 60.06 feet to a point in the southwestern right-of-way (25 feet from center) of Graham Street (Secondary Road No. 1327); thence as said right-of-way line, South 25 degrees 06 minutes 51 seconds East 631.29 feet to the BEGINNING containing 17.22 acres as surveyed by George T. Paris and Associates, P.A. using NAD 83 grid meridian, and being a portion of the lands owned by Milliken and Company as will appear of record in the public registry of Robeson County.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1995.

S.B. 832 **CHAPTER 204**

AN ACT TO PROVIDE FOR THE COURT OF APPEALS TO HEAR APPEALS IN CRIMINAL CASES IN WHICH LIFE SENTENCES ARE IMPOSED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-27 reads as rewritten:

"*§ 7A-27. Appeals of right from the courts of the trial divisions.*

(a) Appeal lies of right directly to the Supreme Court in all cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of ~~death or imprisonment for life.~~ death.

(b) From any final judgment of a superior court, other than the one described in subsection (a) of this section, or one based on a plea of guilty or nolo contendere, including any final judgment entered upon review of a decision of an administrative agency, appeal lies of right to the Court of Appeals.

(c) From any final judgment of a district court in a civil action appeal lies of right directly to the Court of Appeals.

(d) From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding which

(1) Affects a substantial right, or

(2) In effect determines the action and prevents a judgment from which appeal might be taken, or

(3) Discontinues the action, or

(4) Grants or refuses a new trial, appeal lies of right directly to the Court of Appeals.

(e) From any other order or judgment of the superior court from which an appeal is authorized by statute, appeal lies of right directly to the Court of Appeals."

Sec. 2. This act becomes effective December 1, 1995, and applies to cases tried on or after that date.

In the General Assembly read three times and ratified this the 8th day of June, 1995.

S.B. 886

CHAPTER 205

AN ACT TO AMEND THE HOSPITAL COOPERATION ACT REGARDING COOPERATIVE AGREEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-192.2(2) reads as rewritten:

"(2) 'Cooperative agreement' means an agreement among two or more hospitals, ~~or~~ between a hospital and any other person, or between a person who controls a hospital and another hospital or person who controls a hospital for ~~the~~ any of the following:

a. The sharing, allocation, or referral of patients, personnel, instructional programs, support services and facilities, or medical, diagnostic, or laboratory facilities or equipment, or procedures or other services traditionally offered by hospitals.

b. A purchase of assets pursuant to a merger or sale, a partnership, a joint venture, or any other affiliation by which ownership or control over all or substantially all of the stock, assets, or activities of one or more hospitals or persons who control hospitals are transferred to another hospital or person who controls a hospital.

~~Cooperative agreement~~ 'Cooperative agreement' shall not include any agreement ~~by which ownership over substantially all of the stock, assets, or activities of one or more previously licensed and operating hospitals is transferred nor any agreement~~ that would permit self-referrals of patients by a health care provider that is otherwise prohibited by law."

Sec. 2. G.S. 131E-192.11 reads as rewritten:

"§ *131E-192.11. Fees for applications and periodic reports.*

(a) The Department and the Attorney General shall establish a schedule of fees for filing an application for a certificate of public advantage and for filing a periodic report based on the total cost of the project for which the application or periodic report is made. The fee for filing an application may not exceed fifteen thousand dollars ($15,000). The fee for filing a periodic report may not exceed two thousand five hundred dollars ($2,500). The fee schedule established should generate sufficient revenue to offset the costs of the program. An application filing fee must be paid to the Department at the time an application for a certificate of public advantage is submitted to it pursuant to G.S. 131E-192.3. A periodic report filing fee must be paid to the Department at the time a periodic report is submitted to it pursuant to G.S. 131E-192.9.

(b) If the Department or the Attorney General determines that consultants are needed to complete a review of an application, an additional application fee may be established by prior agreement with the applicants before the application is considered. The amount of the additional fee may not exceed the costs of contracting with the necessary consultants. The additional fee shall not be considered in determining whether an application fee exceeds the maximum application fee amount set in subsection (a) of this section."

Sec. 3. This act is effective upon ratification and applies to applications filed on or after this date.

In the General Assembly read three times and ratified this the 8th day of June, 1995.

H.B. 634 **CHAPTER 206**

AN ACT RELATING TO THE AUTHORITY AND JURISDICTION OF CITY LAW ENFORCEMENT OFFICERS WHILE TRANSPORTING PERSONS IN CUSTODY WITHIN THE STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-402(c) reads as rewritten:

"(c) City Officers, Outside Territory. -- Law-enforcement officers of cities may arrest persons at any point which is one mile or less from the nearest point in the boundary of such city. Law enforcement officers of cities may transport a person in custody to or from any place within the State for the purpose of that person attending criminal court proceedings. While engaged in the transportation of persons for the purpose of attending criminal court proceedings, law enforcement officers of cities may arrest persons at any place within the State for offenses occurring in connection with and incident to the transportation of persons in custody."

Sec. 2. This act becomes effective December 1, 1995.

In the General Assembly read three times and ratified this the 8th day of June, 1995.

H.B. 754 **CHAPTER 207**

AN ACT TO PROVIDE THAT WHEN A WATER AND SEWER AUTHORITY WAS FORMED BY A COUNTY AND ONE CITY, AND THE MAJORITY OF THE CUSTOMERS OF THE AUTHORITY ARE LOCATED WITHIN A CITY THAT IS NOT A MEMBER, THAT CITY MAY JOIN THE AUTHORITY AND APPOINT MEMBERS TO ITS GOVERNING BOARD.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 162A of the General Statutes is amended by adding a new section to read:

"*§ 162A-5.1. Political subdivision allowed to join certain authorities.*

(a) As used in this section, 'city' means a city, town, or incorporated village.

(b) When an authority was organized under G.S. 162A-3.1 by one county and one city, and the majority of the authority's water customers are located within a city which is not the city that was one of the two original organizers, then that city may join the authority and appoint members as provided by this section.

(c) A city joining the authority under this section shall do so in accordance with the procedures of G.S. 162A-4. The resolution shall become effective upon the issuance of a certificate of joinder under G.S. 162A-4(c).

(d) When a city joins an authority under this section, then effective on a date set in the resolution, but not earlier than the first day of the second calendar month after the issuance of the certificate of joinder under G.S. 162A-4(c), the terms of office of all the members of the authority are terminated, and the authority shall consist of members appointed as follows:

(1) Two members appointed by the governing board of the city joining the authority under this section. These members must be residents of that city.

(2) One member appointed by the governing board of the city that was one of the two original organizers. That member must be a resident of that city.

(3) One member appointed by the board of commissioners of the county that was one of the two original organizers. This member must be a resident of a household served by the authority's water system.

(4) One member appointed by the board of commissioners of the county that was one of the two original organizers. This member must be a resident of a household served by a sewer system operated by the authority, but may not be a resident of a household served by the authority's water system.

(5) One member appointed by the board of commissioners of the county that was one of the two original organizers. This member must be a resident of a household served by the authority's water system which is located outside the corporate limits of any municipality.

(6) One member appointed by the board of commissioners of the county that was one of the two original organizers. That member must be a resident of the city that has the second highest number of residential water customers served by the authority."

Sec. 2. G.S. 162A-4(a) reads as rewritten:

"(a) Whenever an authority has been organized under the provisions of this Chapter, any political subdivision may withdraw therefrom at any time prior to the creation of any obligations by the authority, and any political subdivision not having joined in the original organization may, with the consent of the authority, join the authority; provided, that any political subdivision not having joined the original organization shall have the right upon reasonable terms and conditions, whether the authority shall consent thereto or not, to join the authority if the authority's water system or sewer system, or any part thereof is situated within the boundaries of the political subdivision or of the county within which the political subdivision is ~~located.~~

located; provided, further, that any political subdivision authorized to join the authority by G.S. 153A-5.1 may do so without the consent of the authority."

Sec. 3. G.S. 162A-5 reads as rewritten:

"*§ 162A-5. Members of authority; organization; quorum.*

(a) Each authority organized under this Article shall consist of the number of members as may be agreed upon by the participating political subdivision, such members to be selected by the respective political subdivision. A proportionate number (as nearly as can be) of members of the authority first appointed shall have terms expiring one year, two years and three years respectively from the date on which the creation of the authority becomes effective. Successor members and members appointed by a political subdivision subsequently joining the authority shall each be appointed for a term of three years, but any person appointed to fill the vacancy shall be appointed to serve only for the unexpired term and any member may be reappointed; provided, however, that a political subdivision subsequently joining an authority created under G.S. 162A-3.1 shall not have the right to appoint any members to such authority. Appointments of successor members shall, in each instance, be made by the governing body of the political subdivision appointing the member whose successor is to be appointed. Any member of the authority may be removed, with or without cause, by the governing body appointing said member. This subsection does not apply in the case of an authority that a city joins under G.S. 162A-5.1.

(b) Each authority organized under this Article that a city has joined under G.S. 162A-5.1 shall consist of the number of members provided by that section, such members to be selected as provided by that section. Two each of the members of the authority first appointed after a city has joined under G.S. 162A-5.1 shall have terms expiring one year and two years respectively from the date on which the certificate of joinder was issued, and three of the members of the authority first appointed after a city has joined under G.S. 162A-5.1 shall have terms expiring three years from the date on which the certificate of joinder was issued. Such designation shall be made by the authority by lot at the meeting where members take their oaths of office. Successor members shall each be appointed for a term of three years to commence on the day that the terms of the prior members' terms expire, but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term and any member may be reappointed. Appointments of successor members shall, in each instance, be made by the governing body of the political subdivision appointing the member whose successor is to be appointed. Any member of the authority may be removed, with or without cause, by the governing body appointing said member.

(c) Each member of the authority before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution of the United States and of this State and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the secretary of the authority.

The authority shall select one of its members as chairman and another as vice-chairman and shall also select a secretary and a treasurer who may but need not be members of the authority. The offices of secretary and treasurer

may be combined. The terms of office of the chairman, vice-chairman, secretary and treasurer shall be as provided in the bylaws of the authority.

A majority of the members of the authority shall constitute a quorum and the affirmative vote of a majority of all of the members of the authority shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all of the duties of the authority. The members of the authority may be paid a per diem compensation set by the authority which per diem may not exceed the total amount of two thousand dollars ($2,000) annually, and shall be reimbursed for the amount of actual expenses incurred by them in the performance of their duties."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1995.

H.B. 799 **CHAPTER 208**

AN ACT TO MODIFY THE DEFINITION OF CREDIT ACCIDENT AND HEALTH INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-57-5 reads as rewritten:

"*§ 58-57-5. Definitions.*

As used in this Article, unless the context requires otherwise, the following words or terms shall have the meanings herein ascribed to them, respectively:

(1) Repealed by Session Laws 1991, c. 720, s. 6.

(2) 'Credit accident and health insurance' means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction as defined in ~~G.S. 58-51-100;~~ G.S. 58-51-100, with or without insurance against death by accident.

(2a) 'Credit insurance agent' means an agent of an insurance company licensed in this State who is authorized to solicit, negotiate or effect credit life insurance, credit accident and health insurance, credit unemployment insurance, credit property insurance, or any of them, but only to the extent as is authorized and limited in this ~~Article;~~ Article.

(3) 'Credit life insurance' means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction as defined in ~~G.S. 58-58-10;~~ G.S. 58-58-10.

(4) Recodified as G.S. § 58-57-5(2a) (See Note.)

(4a) 'Credit transaction' means any transaction by the terms of which the repayment of money loaned or loan commitment made, or payment for goods, services, or properties sold or leased, is to be made at a future date or ~~dates;~~ dates.

(4b) 'Credit unemployment insurance' means insurance on a debtor in connection with a specified loan or other credit transaction to provide payment to a creditor of the debtor for the installment

payments or other periodic payment becoming due while the debtor is involuntarily unemployed as defined in the ~~policy;~~ policy.

(5) 'Creditor' means any lender of money or vendor or lessor of goods, services, property, rights or privileges, including any person that directly or indirectly provides credit in connection with any such sale or lease, for which payment is arranged through a credit-related transaction; or any successor to the right, title or interest of any such lender, vendor, lessor, or person extending credit, and an affiliate, associate, or subsidiary of any of them, or any director, officer, or employee of any of them or any other person in any way associated with any of ~~them;~~ them.

(6) 'Debtor' means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit ~~transaction;~~ transaction.

(7) 'Indebtedness' means the total amount payable for the term of the loan by debtor to creditor in connection with a loan or other credit transaction, including principal, interest, allowable charges, and any premiums authorized ~~hereunder;~~ hereunder.

(7a) 'Joint accident and health coverage' means credit accident and health insurance covering two or more debtors; provided that only one monthly benefit, as defined in G.S. 58-57-15(b), shall be payable each month on a specific indebtedness regardless of the number of debtors ~~insured;~~ insured.

(8) 'Joint life coverage' means credit life insurance covering two or more lives, the entire amount of insurance being payable upon the death of the first insured debtor to ~~die;~~ die.

(9) 'Lease' means a contract whereby the lessee of a 'motor vehicle,' as defined in G.S. 20-4.01(23), contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property, but not exceeding the term of years in G.S. 58-57-1.

(10) 'Open-end credit' means credit extended by a creditor under an agreement in which:

a. The creditor reasonably contemplates repeated transactions;
b. The creditor imposes a finance charge from time to time on an outstanding unpaid balance; and
c. The amount of credit that may be extended to the debtor during the term of the agreement (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

'Open-end credit' includes credit card balances.

(11) 'Truncated coverage' means a credit insurance benefit with a term of insurance coverage that is less than the term of the credit ~~transaction;~~ transaction."

Sec. 2. This act is effective upon ratification, and applies to all actions filed on or after the date of ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1995.

H.B. 805 CHAPTER 209

AN ACT TO RESTORE MINIMUM PENALTIES FOR MAJOR WILDLIFE OFFENSES AND TO MAKE OTHER MINOR REVISIONS TO THE PENALTY PROVISIONS FOR WILDLIFE OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-294 reads as rewritten:

"*§ 113-294. Specific violations.*

(a) Any person who unlawfully sells, possesses for sale, or buys any wildlife is guilty of a Class 2 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(b) Any person who unlawfully sells, possesses for sale, or buys any deer or wild turkey is guilty of a Class ~~3~~ 2 misdemeanor, ~~unless a greater penalty is~~ punishable by a fine of not less than two hundred fifty dollars ($250.00) in addition to such other punishment prescribed for the offense in question.

(c) Any person who unlawfully takes, possesses, or transports any wild turkey is guilty of a Class ~~3~~ 2 misdemeanor, ~~unless a greater penalty is~~ punishable by a fine of not less than two hundred fifty dollars ($250.00) in addition to such other punishment prescribed for the offense in question.

(c1) Any person who unlawfully takes, possesses, transports, sells, possesses for sale, or buys any bear or bear part is guilty of a Class 1 misdemeanor, ~~unless a greater penalty is~~ punishable by a fine of not less than two thousand dollars ($2,000) in addition to such other punishment prescribed for the offense in question. Each of the acts specified shall constitute a separate offense.

(c2) Any person who unlawfully takes, possesses, transports, sells, possesses for sale, or buys any cougar (Felis concolor) is guilty of a Class 1 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(d) Any person who unlawfully takes, possesses, or transports any deer is guilty of a Class 3 misdemeanor, ~~unless a greater penalty is~~ punishable by a fine of not less than one hundred dollars ($100.00) in addition to such other punishment prescribed for the offense in question.

(e) Any person who unlawfully takes deer between a half hour after sunset and a half hour before sunrise with the aid of an artificial light is guilty of a Class ~~3~~ 2 misdemeanor, ~~unless a greater penalty is~~ punishable by a fine of not less than two hundred fifty dollars ($250.00) in addition to such other punishment prescribed for the offense in question.

(f) Any person who unlawfully takes, possesses, transports, sells, or buys any beaver, or violates any rule of the Wildlife Resources Commission adopted to protect beavers, is guilty of a Class ~~2~~ 3 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(g) Any person who unlawfully takes wild animals or birds from or with the use of a vessel equipped with a motor or with motor attached is guilty of a Class 2 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(h) Any person who willfully makes any false or misleading statement in order to secure for himself or another any license, permit, privilege, exemption, or other benefit under this Subchapter to which he or the person in question is not entitled is guilty of a Class 1 misdemeanor.

(i) Any person who violates any provision of G.S. 113-291.6, regulating trapping, is guilty of a Class 2 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(j) Any person who unlawfully sells, possesses for sale, or buys a fox, or who takes any fox by unlawful trapping or with the aid of any electronic calling device is guilty of a Class 2 misdemeanor, unless a greater penalty is prescribed for the offense in question.

~~(k) Any person who has been convicted of one of the fox offenses listed below who subsequently commits the same or another one of the fox offenses listed below is guilty of a Class 3 misdemeanor, unless a greater penalty is prescribed for the offense in question. The fox offenses covered by this subsection are unlawfully selling, possessing for sale, or buying a fox; taking a fox by unlawful trapping; or unlawfully taking a fox with the aid of any electronic calling device.~~

(l) Any person who unlawfully takes, possesses, transports, sells or buys any bald eagle or golden eagle, alive or dead, or any part, nest or egg of a bald eagle or golden eagle is guilty of a Class 1 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(m) Any person who unlawfully takes any migratory game bird with a rifle; or who unlawfully takes any migratory game bird with the aid of live decoys or any salt, grain, fruit, or other bait; or who unlawfully takes any migratory game bird during the closed season or during prohibited shooting hours; or who unlawfully exceeds the bag limits or possession limits applicable to any migratory game ~~bird~~ bird; or who violates any of the migratory game bird permit or tagging rules of the Wildlife Resources Commission is guilty of a Class ~~3 misdemeanor.~~ 2 misdemeanor, punishable by a fine of not less than one hundred dollars ($100.00) in addition to any other punishment prescribed for the offense in question."

Sec. 2. G.S. 113-294 is amended by adding a new subsection to read:

"(n) Any person who violates any rule of the Commission that restricts access by vehicle on game lands to a person who holds a special vehicular access identification card and permit issued by the Commission to persons who have a handicap that limits physical mobility shall be guilty of a Class 2 misdemeanor and shall be fined not less than one hundred dollars ($100.00) in addition to any other punishment prescribed for the offense."

Sec. 3. G.S. 113-135(a) reads as rewritten:

"(a) Any person who violates any provision of this Subchapter or any rule adopted by the Marine Fisheries Commission or the Wildlife Resources Commission, as appropriate, pursuant to the authority of this Subchapter, is guilty of a misdemeanor except that punishment for violation of the rules of the Wildlife Resources Commission is limited as set forth in G.S. 113-135.1. Unless a different level of punishment is elsewhere set out, anyone convicted of a misdemeanor under this section is punishable as follows:

(1) For a first conviction, as a Class 3 misdemeanor.

N.C. Collection / UNC Library

(2) For a second or subsequent conviction within ~~one year,~~ three years, as a Class 2 misdemeanor."

Sec. 4. This act becomes effective 1 October 1995, and applies to offences committed on or after that date.

In the General Assembly read three times and ratified this the 8th day of June, 1995.

H.B. 812 **CHAPTER 210**

AN ACT TO REENACT, WITH MODIFICATIONS, CERTAIN MISDEMEANORS RELATING TO FIRES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new section to read:

"*§ 14-138.1. Setting fire to grassland, brushland, or woodland.*

Any person, firm, corporation, or other legal entity who shall in any manner whatsoever start any fire upon any grassland, brushland, or woodland without fully extinguishing the same, shall be guilty of a Class 3 misdemeanor which may include a fine of not less than ten dollars ($10.00) or more than fifty dollars ($50.00). For the purpose of this section, the term 'woodland' includes timber and cutover land and all second growth stands on areas that were once cultivated."

Sec. 2. Chapter 14 of the General Statutes is amended by adding a new section to read:

"*§ 14-140.1. Certain fire to be guarded by watchman.*

Any person, firm, corporation, or other legal entity who shall burn any brush, grass, or other material whereby any property may be endangered or destroyed, without keeping and maintaining a careful watchman in charge of the burning, shall be guilty of a Class 3 misdemeanor which may include a fine of not less than ten dollars ($10.00) or more than fifty dollars ($50.00). Fire escaping from the brush, grass, or other material while burning shall be prima facie evidence of violation of this provision."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1995.

S.B. 241 **CHAPTER 211**

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO SELL SOUVENIRS ON FERRIES AND AT FERRY FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-82 reads as rewritten:

"*§ 136-82. Department of Transportation to establish and maintain ferries.*

The Department of Transportation is vested with authority to provide for the establishment and maintenance of ferries connecting the parts of the State highway system, whenever in its discretion the public good may so

require, and to prescribe and collect such tolls therefor as may, in the discretion of the Department of Transportation, be expedient.

To accomplish the purpose of this section said Department of Transportation is authorized to acquire, own, lease, charter or otherwise control all necessary vessels, boats, terminals or other facilities required for the proper operation of such ferries or to enter into contracts with persons, firms or corporations for the operation thereof and to pay therefor such reasonable sums as may in the opinion of said Department of Transportation represent the fair value of the public service rendered.

~~To provide for the comfort and convenience of the passengers on the ferries established and maintained pursuant to this section, the~~ The Department of Transportation, notwithstanding any other provision of law, may operate, or contract for the operation of, concessions on the ferries and at ferry facilities to provide to passengers on the ferries food, drink, and other refreshments, ~~and~~ personal comfort ~~items for those passengers.~~ items, and souvenirs publicizing the ferry system."

Sec. 2. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 12th day of June, 1995.

S.B. 427 **CHAPTER 212**

AN ACT TO PROVIDE STAGGERED TERMS FOR THE MOMEYER TOWN COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. Section 3.3 of the Charter of the Town of Momeyer, being Chapter 242 of the Session Laws of 1991, reads as rewritten:

"Sec. 3.3. *Term of office of Council members.* Members of the Council are elected to four-year ~~terms.~~ terms, except that in the 1995 town election, the two persons receiving the highest numbers of votes are elected to four-year terms and the two persons receiving the next highest numbers of votes are elected to two-year terms."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1995.

S.B. 477 **CHAPTER 213**

AN ACT TO ENACT THE NORTH CAROLINA FOREIGN-MONEY CLAIMS ACT, WHICH ACT ESTABLISHES A STANDARD FOR CONVERTING CURRENCY FOR MONETARY DAMAGES RESULTING FROM A FOREIGN JUDICIAL PROCEEDING OR ARBITRATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 19.

"The North Carolina Foreign-Money Claims Act.

"§ 1C-1820. *Definitions.*

As used in this Article:

(1) 'Action' means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

(2) 'Bank-offered spot rate' means the spot rate of exchange at which a bank will sell foreign money at a spot rate.

(3) 'Conversion date' means the banking day next preceding the date on which money, in accordance with this Article, is:

a. Paid to a claimant in an action or distribution proceeding;

b. Paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or

c. Used to recoup, set off, or counterclaim in different moneys in an action or distribution proceeding.

(4) 'Distribution proceeding' means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.

(5) 'Foreign money' means money other than money of the United States.

(6) 'Foreign-money claim' means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money.

(7) 'Money' means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.

(8) 'Money of the claim' means the money determined as proper for payment of the claim pursuant to G.S. 1C-1823.

(9) 'Person' means an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(10) 'Rate of exchange' means the rate at which money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. 'Rate of exchange' means, if separate rates of exchange apply to different kinds of transactions, the rate applicable to the particular transaction giving rise to the foreign-money claim.

(11) 'Spot rate' means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or its equivalent, by charge to an account, or by an agreed delayed settlement not exceeding two days.

(12) 'State' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

"§ 1C-1821. Scope of Article.

(a) This Article applies only to a foreign-money claim in an action or distribution proceeding.

(b) This Article applies to foreign-money issues even if other law under the conflict of laws rules of this State applies to other issues in the action or distribution proceeding.

"§ 1C-1822. Variation by agreement.

(a) The effect of this Article may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

(b) Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

"§ 1C-1823. Determining proper money of the claim.

(a) The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment.

(b) If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

(1) Regularly used between the parties as a matter of usage or course of dealing;

(2) Used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

(3) In which the loss was ultimately felt or will be incurred by the party claimant.

"§ 1C-1824. Determining amount of the money of certain contract claims.

(a) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid shall be determined on the conversion date.

(b) If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding 30 days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(c) A monetary claim is neither usurious nor unconscionable for the reason that the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

"§ 1C-1825. Asserting and defending foreign-money claims.

(a) A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant shall make the claim in United States dollars.

(b) An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.

(c) A person may assert a defense, setoff, recoupment, or counterclaim in any money without regard to the money of other claims.

(d) The determination of the proper money of the claim pursuant to G.S. 1C-1823 is a question of law.

"*§ 1C-1826. Judgments and awards on foreign-money claims, times of money conversion; form of judgments.*

(a) Except as provided in subsection (c) of this section, a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.

(b) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars that will purchase that foreign money on the conversion date at a bank-offered spot rate.

(c) A judgment or award on a foreign-money claim shall assess costs in United States dollars.

(d) Each payment in United States dollars shall be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

(e) A judgment or award made in an action or distribution proceeding on:

(1) A defense, setoff, recoupment, or counterclaim, and

(2) The adverse party's claim

shall be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger and shall specify the rates of exchange used.

(f) A judgment substantially in the following form satisfies the provisions of this section:

'It is ORDERED, ADJUDGED, AND DECREED that defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate pursuant to G.S. 1C-1828) percent a year or, at the option of the judgment debtor, the number of United States dollars that will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.'

(g) If a contract claim is of the type covered by G.S. 1C-1824(a) or G.S. 1C-1824(b), the judgment or award shall be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars that will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(h) A judgment shall be filed, docketed, and indexed in foreign money in the same manner as other judgments and has the same effect as a lien. A judgment may be discharged by payment.

(i) A party seeking enforcement of a judgment entered as provided in this section shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the rate of exchange used and how it was obtained and setting forth the calculation and the amount of United States dollars that would satisfy the judgment on the date of the affidavit or certificate by applying that rate of exchange. Affected court officials shall incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate. The computation contained in the affidavit or certificate shall remain in effect for 90 days following the filing of the affidavit or certificate and may be recomputed before the expiration of 90 days by filing additional affidavits or certificates. Recomputation shall not affect any payment obtained before the filing of the recomputation.

(j) When a payment is made to a clerk's office pursuant to G.S. 1-239, the clerk may determine the spot rate of exchange on the conversion date on the basis of information received in good faith from any bank officer or other reliable source and shall incur no liability to any person for crediting a payment toward a judgment, or for marking a judgment satisfied in full, on the basis of the rate so determined.

"§ 1C-1827. Conversions of foreign money in distribution proceedings.

The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated shall govern all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

"§ 1C-1828. Prejudgment and judgment interest.

(a) Except as provided in subsection (b) of this section, recovery of prejudgment or pre-award interest and the rate of interest to be applied in the action or distribution proceeding shall be determined by the substantive law governing the right to recovery under the conflict of laws rules of this State.

(b) The court or arbitrator shall increase or decrease the amount of prejudgment or pre-award interest otherwise payable in a judgment or award in foreign money to the extent required by the law of this State governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party or its attorney causing undue delay or expense.

(c) A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this State.

"§ 1C-1829. Enforcement of foreign judgments.

Subject to the provisions of Article 17 and 18 of this Chapter:

(a) If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this State as enforceable, the enforcing judgment shall be entered as provided in G.S.

1C-1826, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

(b) A foreign judgment may be filed or docketed in accordance with any rule or statute of this State providing a procedure for its recognition and enforcement.

(c) A satisfaction or partial payment made upon the foreign judgment, on proof thereof, shall be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this State.

(d) A judgment entered on a foreign-money claim only in United States dollars in another state shall be enforced in this State in United States dollars only.

"§ *1C-1830. Determining United States dollar value of assets to be seized or restrained.*

(a) Computations under this section shall not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

(b) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court-required undertaking, shall be ascertained as provided in subsections (c) and (d) of this section.

(c) A party seeking process, costs, bond, or other undertaking under subsection (b) of this section shall compute in United States dollars the amount of the foreign-money claim from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.

(d) A party seeking the process, costs, bond, or other undertaking under subsection (b) of this section shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials shall incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

"§ *1C-1831. Effect of currency revalorization.*

(a) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss shall be treated as if expressed or incurred in the new money at the rate of conversion the issuing country established for the payment of like obligations or losses denominated in the former money.

(b) If substitution under subsection (a) of this section occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money.

"§ 1C-1832. *Supplementary general principles of law.*

Unless displaced by particular provisions of this Article, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes shall supplement its provisions.

"§ 1C-1833. *Uniformity of application and construction.*

This Article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Article among states enacting it.

"§ 1C-1834. *Short title.*

This Article may be cited as the North Carolina Foreign-Money Claims Act."

Sec. 2. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions of this act that can be given effect without the invalid provision or application, and to this end the provisions of Article 19 of Chapter 1C of the General Statutes, as enacted in Section 1 of this act, are severable.

Sec. 3. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Foreign Money Claims Act, as the Revisor deems appropriate.

Sec. 4. This act becomes effective October 1, 1995, and applies to actions and distribution proceedings commenced on or after that date.

In the General Assembly read three times and ratified this the 12th day of June, 1995.

S.B. 560 **CHAPTER 214**

AN ACT TO AUTHORIZE A COUNTY DIRECTOR OF SOCIAL SERVICES TO DELEGATE THE FUNCTION OF ISSUING YOUTH EMPLOYMENT CERTIFICATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-25.5(a) reads as rewritten:

"(a) No youth under 18 years of age shall be employed by any employer in any occupation without a youth employment certificate unless specifically exempted. The Commissioner of Labor shall prescribe regulations for youths and employers concerning the issuance, maintenance and revocation of certificates. Certificates will be ~~issued~~ issued, subject to review by the Department of Labor, by county directors of social ~~services, subject to review by the Department of Labor;~~ services and such of their designees as are approved by the Commissioner; provided, the Commissioner may by regulation require that the Department of Labor issue certificates for occupations with unusual or unique characteristics."

Sec. 2. G.S. 108A-14(b) reads as rewritten:

"(b) The director may delegate to one or more members of his staff the authority to act as his representative. The director may limit the delegated authority of his representative to specific tasks or areas of expertise. The director may designate, subject to the approval of the Commissioner of

Labor, additional personnel outside his staff to issue youth employment certificates."

Sec. 3. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 12th day of June, 1995.

S.B. 717 **CHAPTER 215**

AN ACT TO REQUIRE THE MOORE COUNTY BOARD OF COMMISSIONERS TO REDISTRICT THEIR RESIDENCY DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"*§ 153A-22.1. Redefining residency district boundaries.*

(a) 'Residency district' means a district in which the candidates reside and represent the district, but the candidates are voted on in the primaries and general elections by the qualified voters of the entire county. It includes districts established either by local act or under G.S. 153A-58(3)d.

(b) If a county is divided into residency districts, the board of commissioners may find as a fact whether there is substantial inequality of population among the districts. If the board finds that there is substantial inequality of population among the districts, it may by resolution redefine the residency districts to make them more nearly equal. The test for compliance with this section is a reduction in the relative overall range of deviation.

(c) No change in the boundaries of a residency district may affect the unexpired term of office of a commissioner residing in the district and serving on the board on the effective date of the resolution. If the terms of office of members of the board do not all expire at the same time, the resolution shall state which seats are to be filled at the initial election held under the resolution.

(d) A resolution adopted pursuant to this section shall be the basis of electing persons to the board of commissioners at the first general election for members of the board of commissioners occurring after the resolution's effective date, and thereafter. A resolution becomes effective upon its adoption, unless it is adopted during the period beginning 150 days before the day of a primary and ending on the day of the next succeeding general election for membership on the board of commissioners, in which case it becomes effective on the first day after the end of the period.

(e) Not later than 10 days after the day on which a resolution becomes effective, the clerk shall file in the Secretary of State's office, in the office of the register of deeds of the county, and with the chairman of the county board of elections, a certified copy of the resolution.

(f) This section applies to Moore County only."

Sec. 2. Notwithstanding G.S. 153A-22.1(b) as it applies to Moore County, the board of county commissioners of that county shall, no later than August 15, 1995, by resolution adopted under G.S. 153A-22.1,

redefine the residency districts to make them more nearly equal by reducing the relative overall range by at least one-half.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1995.

H.B. 366 **CHAPTER 216**

AN ACT TO DIRECT THE UTILITIES COMMISSION TO ISSUE CERTIFICATES OF CONVENIENCE AND NECESSITY FOR NATURAL GAS SERVICE FOR ALL AREAS OF THE STATE FOR WHICH CERTIFICATES HAVE NOT BEEN ISSUED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-36A is amended by adding a new subsection to read:

"(b1) The Commission shall issue a certificate of public convenience and necessity in accordance with the provisions of Article 6 of this Chapter for natural gas service for all areas of the State for which certificates have not been issued. Issuance of certificates shall be completed by January 1, 1997, and shall be made after a hearing process in which any person capable of providing natural gas service to an area of the State for which no certificate has been issued or for which no application has been made by July 1, 1995, may apply to the Commission to be considered for the issuance of a certificate under the provisions of this subsection. In issuing a certificate for any unfranchised area of the State, the Commission shall consider the timeliness with which each applicant could begin providing adequate, reliable, and economical service to that area, as well as any other criteria the Commission finds to be relevant, and the Commission may issue a certificate covering less than the total area applied for by an applicant. If the Commission issues a certificate covering less than the total area applied for by the applicant, the applicant may refuse the certificate. In the event that the Commission receives no application for issuance of a certificate for service to a particular area of the State, or in the event a certificate for service to a particular area is not awarded for any reason, the Commission shall issue a certificate for that area to a person or persons to whom a certificate has already been issued."

Sec. 2. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 12th day of June, 1995.

H.B. 424 **CHAPTER 217**

AN ACT TO MAKE TECHNICAL CHANGES REGARDING THE INSPECTION OF ELEVATORS AND RELATED DEVICES, AND REGARDING THE COLLECTION OF FEES THEREFOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-107 reads as rewritten:

"§ 95-107. Assessment and collection of fees: certificates of safe operation.

The assessment of the fees pursuant to this Article shall be made against the owner or operator of such equipment and ~~shall~~ may be collected at the time of inspection. If the fees are not collected at the time of inspection, the Department must bill the owner or operator of the equipment for the amount of the fee assessed under this Article for the inspection of the equipment and the amount assessed is payable by the owner or operator of the equipment upon receipt of the bill. Certificates of safe operation ~~shall~~ may be withheld by the Department of Labor until such time as the assessed fees are collected."

Sec. 2. G.S. 95-110.5(18) reads as rewritten:

"(18) To require that any device or equipment subject to the provisions of this Article which has been out-of-service and not continuously maintained for one or more years shall not be returned to service without first complying with all rules and regulations governing ~~new~~ existing installations; and".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1995.

H.B. 526 **CHAPTER 218**

AN ACT TO INCREASE THE INFORMAL BID LIMITS RELATING TO THE LETTING OF PURCHASE CONTRACTS BY THE CITY OF GREENSBORO.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 153 of the 1993 Session Laws reads as rewritten:

"Section 1. The first sentence of G.S. 143-129 is amended to read:

'No construction or repair work requiring the estimated expenditure of public money in an amount equal to two hundred thousand dollars ($200,000) for street construction or repair and appurtenances connected therewith, or in an amount equal to or more than seventy-five thousand dollars ($75,000) for other construction or repair work, or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ~~thirty thousand dollars ($30,000),~~ fifty thousand dollars ($50,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of State government, or of any county, city, town or other subdivision of the State, unless the provisions of this section are complied with.'"

Sec. 2. Section 3 of Chapter 53 of the 1987 Session Laws reads as rewritten:

"Sec. 3. G.S. 143-131 is amended by deleting 'two thousand five hundred dollars ($2,500)', and substituting ~~'ten thousand dollars ($10,000)'~~ 'twenty thousand dollars ($20,000)'."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1995.

H.B. 618 **CHAPTER 219**

AN ACT TO INCREASE THE THRESHOLD AT WHICH MECKLENBURG COUNTY AND THE MUNICIPALITIES WITHIN THE COUNTY MAY USE FORCE ACCOUNT QUALIFIED LABOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-135 reads as rewritten:

"*§ 143-135. Limitation of application of Article.*

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed ~~seventy-five thousand dollars ($75,000).~~ one hundred twenty-five thousand dollars ($125,000). ~~Such~~ The force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of ~~such~~ the work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by ~~such~~ the agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article."

Sec. 2. This act applies to the County of Mecklenburg and to all municipalities located within the County of Mecklenburg only.

Sec. 3. Chapter 563 of the 1973 Session Laws is repealed.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1995.

H.B. 647 **CHAPTER 220**

AN ACT TO ALLOW RECALL OF THE MAYOR AND BOARD OF COMMISSIONERS OF THE TOWN OF ABERDEEN.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Aberdeen, being Chapter 147 of the Session Laws of 1975 is amended by adding a new section to read:

"Sec. 4.2. *Recall.* The Mayor and members of the Board of Commissioners are subject to removal pursuant to this section. An officer is removed upon the filing of a sufficient recall petition and the affirmative vote of a majority of those voting on the question of removal at a recall election.

A recall petition shall be filed with the Town Clerk, who shall immediately forward the petition to the board of elections that conducts elections for the Town of Aberdeen. A petition to recall the Mayor or a member of the Board of Commissioners shall bear the signatures equal in number to at least twenty-five percent (25%) of the registered voters of the Town of Aberdeen.

The board of elections shall verify the petition signatures. If a sufficient recall petition is submitted, the board of elections shall certify its sufficiency to the governing body, and the governing body shall adopt a resolution calling for a recall election to be held not less than 60 days nor more than 100 days after the petition has been certified to the governing body. The election may be held by itself or at the same time as any other general or special election within the period established in this section, and shall be held as otherwise provided in G.S. 163-287. The board of elections shall conduct the recall election. The proposition submitted to the voters shall be substantially in the following form:

'[ ]FOR [ ]AGAINST

The recall of [name of officer]'

The registered voters of the Town of Aberdeen are eligible to vote in an election to recall the Mayor or a member of the Board of Commissioners.

If less than a majority of the votes cast on the question are for the officer's recall, the officer continues in office. If a majority of the votes cast on the question are for the officer's recall, the officer is removed on the date the board of elections certifies the results of the election. A vacancy created by removal of a member of the Board of Commissioners or the Mayor shall be filled in accordance with the provisions of G.S. 160A-63.

No petition to recall an officer may be filed within six months after the officer's election to the governing body nor within six months before the expiration of the officer's term. No more than one election may be held to recall an officer within a single term of office of that officer."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1995.

H.B. 696 **CHAPTER 221**

AN ACT TO DESIGNATE THE CHIEF OF MEDICAL STAFF OF JOHNSTON MEMORIAL HOSPITAL AS AN EX OFFICIO TRUSTEE OF THE COUNTY HOSPITAL AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-9(b) reads as rewritten:

"(b) (1) The county board of commissioners of a county may establish by resolution a county hospital authority to plan, establish, construct, maintain, or operate a hospital facility. The authority shall be referred to as '..... County Hospital Authority.'

(2) The county hospital authority shall consist of six appointed members and ~~one ex officio member.~~ two ex officio members.

(3) The appointed members of the authority shall be appointed by the county board of commissioners. All appointed members shall be residents of the county. Three of the members shall be residents of a city in the county and the remaining three members shall not be residents of the same city or cities in which the other three members appointed under this subdivision reside.

(4) For the initial appointments to the county hospital authority, two of the members shall be appointed for a term of three years, two for a term of four years, and two for a term of five years to achieve staggered terms. All subsequent appointments shall be for five-year terms.

(5) ~~The~~ One ex officio member of the county hospital authority shall be a member of the county board of ~~commissioners.~~ commissioners and the other ex officio member shall be the hospital chief of staff. The ex officio ~~member's term~~ members' terms on the hospital authority shall be commensurate with his or her term as either a member of the county board of ~~commissioners.~~ commissioners or as the chief of staff."

Sec. 2. This act applies only to Johnston County and Johnston County Memorial Hospital.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1995.

H.B. 736 **CHAPTER 222**

AN ACT TO CONFORM THE NORTH CAROLINA FINANCIAL PRIVACY ACT TO THE FEDERAL RIGHT TO FINANCIAL PRIVACY ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53B-5 reads as rewritten:

"*§ 53B-5. Service on customer certification.*

A government authority may have access to a customer's financial record pursuant to G.S. 53B-4(11) only if:

(1) The court order or subpoena describes with reasonable specificity the financial record to which access is sought;

(2) A copy of the court order or subpoena has been served on the customer pursuant to G.S. 1A-1, Rule 4 (j) of the N.C. Rules of Civil Procedure or by certified mail to the customer's last known

address and the court order or subpoena states the name of the government authority seeking access to the financial record and the purpose for which access is sought;

(3) The following notice has been served on the customer pursuant to G.S. 1A-1, Rule 4 (j) of the N.C. Rules of Civil Procedure or by certified mail to the customer's last known address together with the court order or subpoena:

'Records or information held by the financial institution named in the attached process are being sought by government authority in accordance with the North Carolina Financial Privacy Act. You may have rights under the act to challenge access to the records or information. You must, however, act within 10 days from the date this notice was served on you to make a challenge in court or the records or information will be made available. You may wish to employ an attorney to represent you and protect your rights.';

(4) The customer has not challenged the court order or subpoena within 10 days after ~~service;~~ service by certified mail which is presumed to be received three days from mailing;

(5) The government authority has certified in writing to the financial institution that it has complied with the applicable provisions of this Chapter."

Sec. 2. G.S. 53B-8 reads as rewritten:

"*§ 53B-8. Disclosure of financial records.*

No financial institution or its officer, employee, or agent may disclose a customer's financial record to a government authority except as provided in this Chapter. This section does not prohibit a financial institution from giving notice of or disclosing a financial record to a government authority, as defined in G.S. 53B-2(4), to the same extent as is authorized with respect to federal government authorities in the Right to Financial Privacy Act § 1103(d), 12 U.S.C. § 3403(d). Nothing in this Chapter shall prohibit a financial institution or its officer, employee, or agent from notifying a government authority that ~~it~~ the financial institution or its officer, employee, or agent has information that may be relevant to a possible violation of law or ~~regulation, or from disclosing to a government authority only the name, address, account number, and type of account of any customer,~~ regulation. The information shall be limited to a description of the suspected illegal activity and the name or other identifying information concerning any individual, corporation, or account involved in the activity. Any financial institution or its officer, employee, or agent making a disclosure of information pursuant to this section shall not be liable to the customer under the laws and rules of the State of North Carolina or any political subdivision of the State for disclosure or for failure to notify the customer of the disclosure."

Sec. 3. This act is effective October 1, 1995.

In the General Assembly read three times and ratified this the 12th day of June, 1995.

H.B. 787 CHAPTER 223

AN ACT TO PROVIDE FOR DIRECT PAYMENT OF LICENSED PHARMACISTS UNDER HEALTH INSURANCE POLICIES AND PLANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-50-30 reads as rewritten:

"*§ 58-50-30. Discrimination forbidden; right to choose services of optometrist, podiatrist, certified clinical social worker, dentist, chiropractor, ~~or~~ psychologist, pharmacist, or advanced practice registered nurse.*

(a) Discrimination between individuals of the same class in the amount of premiums or rates charged for any policy of insurance covered by Articles 50 through 55 of this Chapter, or in the benefits payable thereon, or in any of the terms or conditions of such policy, or in any other manner whatsoever, is prohibited.

Whenever any policy of insurance governed by Articles 1 through 64 of this Chapter provides for payment of or reimbursement for any service rendered in connection with a condition or complaint which is within the scope of practice of a duly licensed optometrist, a duly licensed podiatrist, a duly licensed dentist, a duly licensed chiropractor, a duly certified clinical social worker, a duly licensed psychologist, a duly licensed pharmacist, or an advanced practice registered nurse, the insured or other persons entitled to benefits under such policy shall be entitled to payment of or reimbursement for such services, whether such services be performed by a duly licensed physician, a duly licensed optometrist, a duly licensed podiatrist, a duly licensed dentist, a duly licensed chiropractor, a duly certified clinical social worker, a duly licensed psychologist, a duly licensed pharmacist, or an advanced practice registered nurse, notwithstanding any provision contained in such policy. Whenever any policy of insurance governed by Articles 1 through 64 of this Chapter provides for certification of disability which is within the scope of practice of a duly licensed physician, a duly licensed optometrist, a duly licensed podiatrist, a duly licensed dentist, a duly licensed chiropractor, a duly certified clinical social worker, a duly licensed psychologist, or an advanced practice registered nurse, the insured or other persons entitled to benefits under such policy shall be entitled to payment of or reimbursement for such disability whether such disability be certified by a duly licensed physician, a duly licensed optometrist, a duly licensed podiatrist, a duly licensed dentist, a duly licensed chiropractor, a duly certified clinical social worker, a duly licensed psychologist, or an advanced practice registered nurse, notwithstanding any provisions contained in such policy. The policyholder, insured, or beneficiary shall have the right to choose the provider of such services notwithstanding any provision to the contrary in any other statute.

Whenever any policy of insurance provides coverage for medically necessary treatment, the insurer shall not impose any limitation on treatment or levels of coverage if performed by a duly licensed chiropractor acting within the scope of his practice as defined in G.S. 90-151 unless a

comparable limitation is imposed on such medically necessary treatment if performed or authorized by any other duly licensed physician.

(b) For the purposes of this section, a 'duly licensed psychologist' shall be defined only to include a psychologist who is duly licensed in the State of North Carolina and has a doctorate degree in psychology and at least two years clinical experience in a recognized health setting, or has met the standards of the National Register of Health Service Providers in Psychology. After January 1, 1995, a duly licensed psychologist shall be defined as a licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board.

(c) For the purposes of this section, a 'duly certified clinical social worker' is a 'certified clinical social worker' as defined in G.S. 90B-3(2) and certified by the North Carolina Certification Board for Social Work pursuant to Chapter 90B of the General Statutes.

(d) Payment or reimbursement is required by this section for a service performed by an advanced practice registered nurse only when:

(1) The service performed is within the nurse's lawful scope of practice;

(2) The policy currently provides benefits for identical services performed by other licensed health care providers;

(3) The service is not performed while the nurse is a regular employee in an office of a licensed physician;

(4) The service is not performed while the registered nurse is employed by a nursing facility (including a hospital, skilled nursing facility, intermediate care facility, or home care agency); and

(5) Nothing in this section is intended to authorize payment to more than one provider for the same service.

No lack of signature, referral, or employment by any other health care provider may be asserted to deny benefits under this provision.

For purposes of this section, an 'advanced practice registered nurse' means only a registered nurse who is duly licensed or certified as a nurse practitioner, clinical specialist in psychiatric and mental health nursing, or nurse midwife.

(e) Payment or reimbursement is required by this section for a service performed by a duly licensed pharmacist only when:

(1) The service performed is within the lawful scope of practice of the pharmacist;

(2) The service performed is not initial counseling services required under State or federal law or regulation of the North Carolina Board of Pharmacy;

(3) The policy currently provides reimbursement for identical services performed by other licensed health care providers; and

(4) The service is identified as a separate service that is performed by other licensed health care providers and is reimbursed by identical payment methods.

Nothing in this subsection authorizes payment to more than one provider for the same service."

Sec. 2. G.S. 58-65-1 reads as rewritten:

"*§ 58-65-1. Regulation and definitions; application of other laws; profit and foreign corporations prohibited.*

(a) Any corporation heretofore or hereafter organized under the general corporation laws of the State of North Carolina for the purpose of maintaining and operating a nonprofit hospital and/or medical and/or dental service plan whereby hospital care and/or medical and/or dental service may be provided in whole or in part by said corporation or by hospitals and/or physicians and/or dentists participating in such plan, or plans, shall be governed by this Article and Article 66 of this Chapter and shall be exempt from all other provisions of the insurance laws of this State, heretofore enacted, unless specifically designated herein, and no laws hereafter enacted shall apply to them unless they be expressly designated therein.

The term 'hospital service plan' as used in this Article and Article 66 of this Chapter includes the contracting for certain fees for, or furnishing of, hospital care, laboratory facilities, X-ray facilities, drugs, appliances, anesthesia, nursing care, operating and obstetrical equipment, accommodations and/or any and all other services authorized or permitted to be furnished by a hospital under the laws of the State of North Carolina and approved by the North Carolina Hospital Association and/or the American Medical Association.

The term 'medical service plan' as used in this Article and Article 66 of this Chapter includes the contracting for the payment of fees toward, or furnishing of, medical, obstetrical, surgical and/or any other professional services authorized or permitted to be furnished by a duly licensed physician, except that in any plan in any policy of insurance governed by this Article and Article 66 of this Chapter that includes services which are within the scope of practice of a duly licensed optometrist, a duly licensed chiropractor, a duly licensed psychologist, a duly licensed pharmacist, an advanced practice registered nurse, a duly certified clinical social worker, and a duly licensed physician, then the insured or beneficiary shall have the right to choose the provider of the care or service, and shall be entitled to payment of or reimbursement for such care or service, whether the provider be a duly licensed optometrist, a duly licensed chiropractor, a duly licensed psychologist, a duly licensed pharmacist, an advanced practice registered nurse, a duly certified clinical social worker, or a duly licensed physician notwithstanding any provision to the contrary contained in such policy. The term 'medical services plan' also includes the contracting for the payment of fees toward, or furnishing of, professional medical services authorized or permitted to be furnished by a duly licensed provider of health services licensed under Chapter 90 of the General Statutes.

(b) Payment or reimbursement is required by this section for a service performed by an advanced practice registered nurse only when:

(1) The service performed is within the nurse's lawful scope of practice;

(2) The policy currently provides benefits for identical services performed by other licensed health care providers;

(3) The service is not performed while the nurse is a regular employee in an office of a licensed physician;

(4) The service is not performed while the registered nurse is employed by a nursing facility (including a hospital, skilled nursing facility, intermediate care facility, or home care agency); and

(5) Nothing in this section is intended to authorize payment to more than one provider for the same service.

No lack of signature, referral, or employment by any other health care provider may be asserted to deny benefits under this provision.

(b1) Payment or reimbursement is required by this section for a service performed by a duly licensed pharmacist only when:

(1) The service performed is within the lawful scope of practice of the pharmacist;

(2) The service performed is not initial counseling services required under State or federal law or regulation of the North Carolina Board of Pharmacy;

(3) The policy currently provides reimbursement for identical services performed by other licensed health care providers; and

(4) The service is identified as a separate service that is performed by other licensed health care providers and is reimbursed by identical payment methods.

Nothing in this subsection authorizes payment to more than one provider for the same service.

(c) For purposes of this section, an 'advanced practice registered nurse' means only a registered nurse who is duly licensed or certified as a nurse practitioner, clinical specialist in psychiatric and mental health nursing, or nurse midwife.

For the purposes of this section, a 'duly certified clinical social worker' is a 'certified clinical social worker' as defined in G.S. 90B-3(2) and certified by the North Carolina Certification Board for Social Work pursuant to Chapter 90B of the General Statutes.

For the purposes of this section, a 'duly licensed psychologist' shall be defined only to include a psychologist who is duly licensed in the State of North Carolina and has a doctorate degree in psychology and at least two years clinical experience in a recognized health setting, or has met the standards of the National Register of Health Providers in Psychology. After January 1, 1995, a duly licensed psychologist shall be defined as a licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board.

The term 'dental service plan' as used in this Article and Article 66 of this Chapter includes contracting for the payment of fees toward, or furnishing of dental and/or any other professional services authorized or permitted to be furnished by a duly licensed dentist.

The insured or beneficiary of every 'medical service plan' and of every 'dental service plan,' as those terms are used in this Article and Article 66 of this Chapter, or of any policy of insurance issued thereunder, that includes services which are within the scope of practice of both a duly licensed physician and a duly licensed dentist shall have the right to choose the provider of such care or service, and shall be entitled to payment of or

reimbursement for such care or service, whether the provider be a duly licensed physician or a duly licensed dentist notwithstanding any provision to the contrary contained in any such plan or policy.

The term 'hospital service corporation' as used in this Article and Article 66 of this Chapter is intended to mean any nonprofit corporation operating a hospital and/or medical and/or dental service plan, as herein defined. Any corporation heretofore or hereafter organized and coming within the provisions of this Article and Article 66 of this Chapter, the certificate of incorporation of which authorizes the operation of either a hospital or medical and/or dental service plan, or any or all of them, may, with the approval of the Commissioner of Insurance, issue subscribers' contracts or certificates approved by the Commissioner of Insurance, for the payment of either hospital or medical and/or dental fees, or the furnishing of such services, or any or all of them, and may enter into contracts with hospitals for physicians and/or dentists, or any or all of them, for the furnishing of fees or services respectively under a hospital or medical and/or dental service plan, or any or all of them.

The term 'preferred provider' as used in this Article and Article 66 of this Chapter with respect to contracts, organizations, policies or otherwise means a health care service provider who has agreed to accept, from a corporation organized for the purposes authorized by this Article and Article 66 of this Chapter or other applicable law, special reimbursement terms in exchange for providing services to beneficiaries of a plan administered pursuant to this Article and Article 66 of this Chapter. Except to the extent prohibited either by G.S. 58-65-140 or by regulations promulgated by the Department of Insurance not inconsistent with this Article and Article 66 of this Chapter, the contractual terms and conditions for special reimbursement shall be those which the corporation and preferred provider find to be mutually agreeable.

(d) No foreign or alien hospital or medical and/or dental service corporation as herein defined shall be authorized to do business in this State."

Sec. 3. This act becomes effective July 1, 1995, and applies to claims for payment or reimbursement for services rendered on or after that date.

In the General Assembly read three times and ratified this the 12th day of June, 1995.

H.B. 849 **CHAPTER 224**

AN ACT TO PERMIT THE ISSUANCE OF ABC PERMITS AT SPORTS CLUBS IN CERTAIN COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1006(k) is amended by adding a new subdivision to read:

"(5) Has not approved the issuance of any permits, borders one of the two largest counties in the State with more than 940 square miles, has an interstate highway running through it, and has at least six cities that have approved the sale of some malt beverages

and unfortified wine and four of which have approved ABC systems."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1995.

S.B. 85 **CHAPTER 225**

AN ACT TO AUTHORIZE HONORARY TRUSTS, TRUSTS FOR PETS, AND TRUSTS FOR CEMETERY LOTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 36A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 14.
"Honorary Trusts; Trusts for Pets;
Trusts for Cemetery Lots.

"§ 36A-145. Honorary trusts.

Except as otherwise provided in this Article, a trust (i) for a noncharitable corporation or unincorporated society or (ii) for a lawful noncharitable purpose may be performed by the trustee for 21 years but no longer, whether or not there is a beneficiary who can seek the trust's enforcement or termination and whether or not the terms of the trust contemplate a longer duration.

"§ 36A-146. Trusts for cemetery lots.

A trust, contract, or other arrangement to provide for the care of a cemetery lot, grave, crypt, niche, mausoleum, columbarium, grave marker, or monument is valid without regard to remoteness of vesting, duration of the arrangement, or lack of definite beneficiaries to enforce the trust, provided that the trust, contract, or other arrangement meets the requirements of G.S. 28A-19-10, Article 4 of Chapter 65 of the General Statutes, Article 9 of Chapter 65 of the General Statutes, or other applicable law. This section does not revoke, repeal, supersede, or diminish G.S. 36A-49.

"§ 36A-147. Trusts for pets.

(a) Subject to the provisions of this section, a trust for the care of one or more designated domestic or pet animals alive at the time of creation of the trust is valid.

(b) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of the designated animal or animals.

(c) The trust terminates at the death of the animal or last surviving animal. Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(1) As directed in the trust instrument;

(2) If the trust was created in a preresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will;

(3) If no taker is produced by the application of subdivision (1) or (2) of this subsection, to the transferor or the transferor's heirs determined as of the date of the transferor's death under Chapter 29 of the General Statutes.

(d) The intended use of the principal or income can be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by the clerk of superior court having jurisdiction over the decedent's estate upon application to the clerk by an individual.

(e) Except as ordered by the clerk or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, bond, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A governing instrument shall be liberally construed to bring the transfer within this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence shall be admissible in determining the transferor's intent.

(g) The clerk may reduce the amount of the property transferred, if the clerk determines that the amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (c) of this section.

(h) If no trustee is designated or if no designated trustee agrees to serve or is able to serve, the clerk shall name a trustee. The clerk may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. The clerk may also make such other orders and determinations as shall be advisable to carry out the intent of the transferor and the purpose of this section.

"*§ 36A-148. Termination of small trusts.*

Notwithstanding any other provision of this Article, a trust created under this Article shall terminate upon the balance of the trust corpus falling below the sum of one hundred dollars ($100.00), at which time the remaining balance shall be disbursed as provided in G.S. 36A-147(c)."

Sec. 2. G.S. 65-9 reads as rewritten:

"*§ 65-9. Funds to be kept perpetually.*

All money placed in the office of the superior court clerk in accordance with this Article shall be held perpetually, ~~and~~ or until such time as the balance of the trust corpus falls below one hundred dollars ($100.00), at which time the trust shall terminate and the clerk shall disburse the remaining balance as provided in G.S. 36A-147(c). Except as otherwise provided herein, no one shall have authority to withdraw or change the direction of the income on same."

Sec. 3. The Revisor of Statutes shall cause to be printed along with this act all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

Sec. 4. This act becomes effective October 1, 1995. Section 1 of this act applies to trusts created on or after that date. Section 2 of this act

applies to all cemetery trusts in existence before or created on or after that date.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

S.B. 344 **CHAPTER 226**

AN ACT TO ESTABLISH THE REQUIREMENTS FOR CERTIFICATION TO TEACH NOTARY COURSES, TO ALLOW REVOCATION OF NOTARIAL COMMISSIONS FOR NOTARIES WHO FAIL TO ADMINISTER OATHS OR AFFIRMATIONS, AND TO PROVIDE THAT APPLICANTS FOR RECOMMISSIONING NEED NOT OBTAIN THE RECOMMENDATION OF A PUBLICLY ELECTED OFFICIAL, AND TO ALLOW THE SECRETARY OF STATE LAW ENFORCEMENT AGENTS TO ENFORCE THE NOTARY CHAPTER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-4 is amended by adding two new subsections to read:

"(d) The course of study required by subsection (b) of this section shall be taught by an instructor certified in accordance with rules adopted by the Secretary of State. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass a six-hour instructor's course taught by the notaries public director or other person approved by the Secretary of State.

(2) Have six months of active experience as a notary public.

(3) Maintain a current commission as a notary public.

(4) Purchase the current notary public guidebook.

Registers of deeds, assistant and deputy registers of deeds, clerks of court, and assistant and deputy clerks of court are exempt from the requirements set forth in subdivisions (2) and (3) of this subsection while they remain actively employed in the capacities named.

(e) Certification to teach a course of study shall be effective for two years and may be renewed by passing a recertification course taught by the notaries public director or other person approved by the Secretary of State."

Sec. 2. G.S. 10A-6 reads as rewritten:

"*§ 10A-6. Recommissioning.*

An applicant for recommissioning as a notary shall submit a new application and comply anew with the provisions of G.S. 10A-4, except ~~for~~ that the applicant shall not be required to complete the course of study described in subdivision ~~(b)(3).~~ (b)(3) nor to obtain the recommendation of a publicly elected official."

Sec. 3. G.S. 10A-13(d) reads as rewritten:

"(d) The Secretary of State may revoke a notarial commission on any ground for which an application for a commission may be denied under G.S. 10A-4(c). The Secretary of State may revoke the commission of a

notary who fails to administer an oath or affirmation when performing a notarial act that requires the administering of an oath or affirmation."

Sec. 4. G.S. 10A-12 reads as rewritten:

"§ *10A-12. ~~Penalties.~~ Enforcement and penalties.*

(a) Any person who holds himself or herself out to the public as a notary or who performs notarial acts and is not commissioned is guilty of a Class 1 misdemeanor.

(b) Any notary who takes an acknowledgment or performs a verification or proof without personal knowledge of the signer's identity or without satisfactory evidence of the signer's identity is guilty of a Class 2 misdemeanor.

(c) Any notary who takes an acknowledgment or performs a verification or proof knowing it is false or fraudulent is guilty of a Class I felony.

(d) Any person who knowingly solicits or coerces a notary to commit official misconduct is guilty of a Class 1 misdemeanor.

(e) For purposes of enforcing this Chapter, the law enforcement agents of the Department of the Secretary of State have statewide jurisdiction and have all of the powers and authority of law enforcement officers when executing arrest warrants. The agents have the authority to assist local law enforcement agencies in their investigations and to initiate and carry out, on their own or in coordination with local law enforcement agencies, investigations of violations of this Chapter."

Sec. 5. This act becomes effective October 1, 1995, and applies to applications for recommission on or after that date.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

S.B. 348 **CHAPTER 227**

AN ACT TO PERMIT THE STATE TO USE THE SETOFF DEBT COLLECTION ACT TO RECOUP FUNDS OWED BY TEACHERS WHO DO NOT FULFILL THEIR OBLIGATIONS UNDER THE NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105A-2(1) is amended by adding a new sub-subdivision to read:

"u. The State Board of Education through the Superintendent of Public Instruction when in the performance of his duties of administering the program under which the State encourages participation in the National Board for Professional Teaching Standards (NBPTS) Program, enabled by Section 19.28 of Chapter 769 of the 1993 Session Laws."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

S.B. 449 **CHAPTER 228**

AN ACT RELATING TO PRACTICE RESTRICTIONS IMPOSED ON HEALTH CARE WORKERS WHO ARE INFECTED WITH HIV OR HEPATITIS B.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-144 is amended by adding the following new subsection to read:

"(h) Anyone who assists in an inquiry or investigation conducted by the State Health Director for the purpose of evaluating the risk of transmission of HIV or Hepatitis B from an infected health care worker to patients, or who serves on an expert panel established by the State Health Director for that purpose, shall be immune from civil liability that otherwise might be incurred or imposed for any acts or omissions which result from such assistance or service, provided that the person acts in good faith and the acts or omissions do not amount to gross negligence, willful or wanton misconduct, or intentional wrongdoing. This qualified immunity does not apply to acts or omissions which occur with respect to the operation of a motor vehicle. Nothing in this subsection provides immunity from liability for a violation of G.S. 130A-143."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

S.B. 755 **CHAPTER 229**

AN ACT TO CHANGE THE DESIGNATED LEGISLATIVE MEMBERSHIP OF THE COMMITTEE ON EMPLOYEE HOSPITAL AND MEDICAL BENEFITS AND THEIR TERMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-38 reads as rewritten:

"*§ 135-38. Committee on Employee Hospital and Medical Benefits.*

(a) The Committee on Employee Hospital and Medical Benefits shall consist of 12 members as follows:

(1) The President Pro Tempore of the ~~Senate;~~ Senate or a designee thereof;

~~(2) The Majority Leader of the Senate;~~

~~(3) The Chairman of the Senate Committee on Appropriations;~~

~~(5) A Cochairman of the Senate Committee on Finance designated by the President Pro Tempore of the Senate;~~

~~(6) Two other members of the Senate appointed by the President Pro Tempore of the Senate; and~~

~~(11) Six members of the House appointed by the Speaker.~~

(2a) The Speaker of the House of Representatives or a designee thereof;

(3a) Five members of the Senate appointed by the President Pro Tempore of the Senate; and

(4a) Five members of the House of Representatives appointed by the Speaker.

(b) The ~~members of the Committee who are members because of the offices they hold~~ President Pro Tempore of the Senate and the Speaker of the House of Representatives, or their designees, shall remain on the Committee for the duration of their terms in those offices. ~~The President Pro Tempore of the Senate and Speaker of the House shall appoint the other members of the Committee for two-year terms beginning on July 1 of odd-numbered years.~~ Terms of the other Committee members are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment and expire January 14, 1997. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. Members shall serve until their successors are appointed.

(c) The Committee shall review programs of hospital, medical and related care provided by Part 3 of this Article as recommended by the Executive Administrator and Board of Trustees of the Plan. The Executive Administrator and the Board of Trustees shall provide the Committee with any information or assistance requested by the Committee in performing its duties under this Article.

(d) The time members spend on Committee business shall be considered official legislative business for purposes of G.S. 120-3."

Sec. 2. This act is effective upon ratification and applies to appointments made on or after that date. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall appoint the members of the Committee on Employee Hospital and Medical Benefits as soon as practicable after ratification of this act.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

H.B. 558 **CHAPTER 230**

AN ACT TO PERMIT THE TOWN OF CATAWBA TO ANNEX AREAS LYING WITHIN THE CORPORATE BOUNDARIES OF THAT TOWN.

The General Assembly of North Carolina enacts:

Section 1. In addition to the authority granted by G.S. 160A-36, the Town of Catawba may adopt an ordinance annexing any territory which, on January 1, 1995, was completely enclosed by the corporate limits of the Town, provided that:

(1) The Town Council fixes a date for a public hearing on the annexation and publishes notice of the public hearing once at least 10 days before the date of the hearing; and

(2) The Town Council makes a finding based upon circumstances and evidence satisfactory to the Town Council that the annexation is necessary for the orderly growth and development of the Town.

Sec. 2. The procedure for recording any annexation under this act is as stated in G.S. 160A-39.

Sec. 3. Any annexation ordinance adopted by the Town Council under this act shall be adopted before December 31, 1995.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

H.B. 596 **CHAPTER 231**

AN ACT TO DESCRIBE THE CORPORATE LIMITS OF THE CITY OF NEW BERN.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of the Charter of the City of New Bern, being Chapter 1281 of the Session Laws of 1957, as amended by Chapter 1111 of the Session Laws of 1961 and Chapter 213 of the Session Laws of 1969 is rewritten to read:

"Sec. 3. Corporate limits. The corporate limits of the City of New Bern as of March 20, 1995, are as follows:

BEGINNING at the intersection of the channels of the Neuse and Trent Rivers; thence from this beginning, up and with the channel of Neuse River and that portion of same which lies south of the unnamed island which is southeast of Hog Island, to the point of intersection of the channel of Neuse River and the channel of Bachelors Creek; thence northwestwardly with the channel of Bachelors Creek, to the intersection of said channel with the channel of McKornan's Creek, also known as 'McCronan's Creek,' also known as 'McKooham's Creek'; thence up and with McKornan's Creek, the following courses and distances, to a point: South 51° 10' West 156.75 feet; North 32° 05' West 1,518.00 feet; North 73° 25' West 780.45 feet; South 66° 50' West 1,051.05 feet; South 08° 10' East 841.50 feet; thence leaving McKornan's Creek, South 47° 10', West 61.0 feet, and South 76° 35' West 3,617.25 feet; thence North 14° 45' West 425.2 feet; thence South 75° 15' West 600 feet along and with the southerly right-of-way line of Briarwood Lane to the northeastern right-of-way line of NCSR 1401; thence northwestwardly, along and with the northeastern right-of-way line of Washington Post Road (NCSR 1401) to a point in said right-of-way line marked by an iron stake (which said iron stake is located the following courses and distances from the intersection of the northerly right-of-way line of Old US 70 with the southerly right-of-way line of NC 55: southeastwardly, along and with the northern right-of-way line of Old US 70 and NC 55 5,500 feet, more or less, to an iron in the right-of-way of said highway; thence North 39° 48' East 2,855.71 feet to an iron in the right-of-way of NCSR 1401 [Washington Post Road]; thence North 39° 48' East 60 feet, more or less, to the northeastern right-of-way line of the Washington Post Road [NCSR 1401]); thence from said iron stake in the northeastern right-of-way line of NCSR 1401, South 39° 48' West 2,915.71 feet, more or less, to an iron in the northerly right-of-way line of Old US 70 and NC 55; thence a northwesterly course along and with the northerly right-of-way

line to the southernmost corner of the property owned by the New Bern-Craven County Board of Education, occupied by the Craven Evaluation and Training Center in January 1991; thence North 30° 20' East, 128 feet; thence South 59° 40' East 125 feet; thence North 30° 20' East 100 feet; thence North 59° 40' West 125 feet; thence North 30° 20' East 249 feet; thence North 30° 45' East 479.5 feet; thence North 57° West 632.57 feet; thence South 68° 10' West 310.17 feet; thence South 26° 50' East 657 feet; thence South 26° 10' West 383.8 feet to the northerly right-of-way line of NCSR 1005, NC 55 (Old US 70 West); thence continuing along and with the northerly right-of-way line of Old US 70 and NC 55 to the point of intersection of the northerly right-of-way line of Old US 70 with the southerly right-of-way line of NC 55; thence northwestwardly, westwardly and southwestwardly along and with the northerly right-of-way line of Old US 70 (SR1005) to its point of intersection with the southeasterly right-of-way line of SR 1242; thence southwestwardly with the southeasterly right-of-way line of SR 1242, and said line extended, to the southerly right-of-way line of the Atlantic & North Carolina Railroad at a point which is 300.9 feet, South 66° 23' East from the intersection of the southerly right-of-way line of said railroad and the southeasterly right-of-way line of SR 1225; thence southeastwardly along and with the southerly right-of-way line of the Atlantic & North Carolina Railroad 14,200 feet to the northernmost corner of the property of Crayton & Company, consisting of 104.25 acres which was annexed to the City of New Bern by ordinance adopted on January 28, 1986; thence South 63° 39' 28" West 311.50 feet; thence South 48° 17' 01" East 4,633.43 feet, more or less, to the northernmost corner of property now or formerly owned by Westminster Company, which was annexed to the City of New Bern by ordinance adopted on May 22, 1979, the effective date of which was June 1, 1979; thence South 39° 26' West, along and with the Westminster line 1,450.96 feet; thence continuing along and with the southwest line of said Westminster property South 48° 13' East 1,469.52 feet to the northwesterly right-of-way line of Racetrack Road; thence South 48° 13' East 60 feet, more or less, to the southeasterly right-of-way line of Racetrack Road, a point in the northwestern line of property owned by the New Bern-Craven County Board of Education on which H. J. MacDonald School is located; thence southwardly, along and with the easterly right-of-way line of Racetrack Road and Racetrack Road, extended, i.e., in the same location in which it was prior to its being closed, in part, to accommodate the US 70 Bypass, to the southwesterly right-of-way line of said US Highway 70 Bypass, the northernmost corner of property owned by Quaere, Ltd., a partnership, annexed to the City of New Bern by ordinance bearing date September 6, 1977; thence northwesterly along and with the southwesterly right-of-way line of said U.S. Highway 70 Bypass to the northwestern corner of Lot 479 of Section VI, Phase II, P.U.D. at Greenbrier; thence South 00° 10' 59" East along and with the western line of Section VI, Phase II, Greenbrier, and the western line of Section VI, Phase I, Greenbrier, to the southwestern corner of Lot 390 of said Phase I, Section VI; thence North 89° 49' 02" East along and with the southern line of Section VI, Phase I, Greenbrier, to a point which is North 26° 39' 56" West 24.89 feet from the southwestern corner of Lot 242, Section IV-B,

Greenbrier; thence South 26° 39' 56" East 24.89 feet to said corner of said Lot 242; thence South 26° 39' 56" East 1,027.76 feet, and South 26° 08' 35" East 274.55 feet; thence continuing southeastwardly along the southwesterly lines of Lots 220, 219, 218, 217, 216, 215, 214, 213, 212, 211, 210, 209, and 208 of Greenbrier, Section III-C, which appears of record in Plat Cabinet E, at Slide 220, Craven County Registry, South 26° 08' 35" East 1,357.81 feet; thence continuing said southeastern course along and with the southwestern lines of Section III-A and Section II, Greenbrier Subdivision, to the northeast corner of the property of the New Bern-Craven County Board of Education on which a new high school has been constructed, being the northeast corner of 'Parcel III' on that certain map entitled 'survey for New Bern-Craven County Board of Education of NBHSH Site, Raines Tract,' by Robert M. Chiles, P.E., dated March 17, 1989, and recorded in Map Cabinet E; thence along and with the northern line of said tract North 84° 25' 00" West 1,323.51 feet, more or less, to the northwest corner of the high school site; thence South 09° 02' 52" West 2,502.60 feet to a point; thence south 00° 16' 00" West 1,017.12 feet to a point in the northerly right-of-way line of US Highway 17; thence along a line perpendicular to the northerly right-of-way line of US 17 South 00° 16' 00" West 150 feet across US Highway 17 to the southerly right-of-way line thereof; thence westwardly along and with the southerly right-of-way line of US Highway 17 to the northwesterly corner of the strip of land 60 feet wide fronting on US Highway 17, which is a part of the 23.17 acres, more or less, conveyed to the New Bern-Craven County Board of Education by deed bearing date June 12, 1989, which appears of record in Book 1224, at Page 910, in the office of the Register of Deeds of Craven County (the subject 23.17 acres being Tract I described in said deed), the said strip of land is now the road entering the property on which is located the 'Ben Quinn Elementary School'; thence South 02° 40' West 399.34 feet; thence North 87° 20' West 643.09 feet; thence South 02° 38' West 159.84 feet; thence North 87° 22' West 94.30 feet; thence South 06° 40' West 690 feet; thence South 82° 30' West 1,419.00 feet; thence South 01° 30' West approximately 700 feet to the centerline of Haywood Creek; thence eastwardly along and with the centerline of Haywood Creek to a point in the run of Haywood Creek, which is the southwest corner of Lot 60 of Haywood Farms Subdivision, Section IV, as shown upon a map of the same by Eastern Engineering and Associates bearing date November 4, 1985, recorded in Plat Cabinet D, at Slide 653, in the office of the Register of Deeds of Craven County; thence continuing along and with the centerline of Haywood Creek in a southerly direction to the southernmost corner of Lot No. 52 in the Plan of Haywood Farms, Section II, which is recorded in Plat Cabinet C, at Slide 347, in the office of the Register of Deeds of Craven County, a point in the city limit lines of the Town of Trent Woods; thence along and with the southernmost line of said lot and Lot No. 53 of said subdivision in a northeasterly direction to the southeastern corner of said Lot No. 53, being the southwestern corner of Lot No. 6 of the Plan of Haywood Farms, Section I, as recorded in Plat Cabinet B, at Slide 339, in the office of the Register of Deeds of Craven County; thence along and with the southernmost line of said subdivision to the southeastern corner of Lot No.

15 of said subdivision; thence in a straight line in a southeasterly direction to the point in the southernmost right-of-way line of River Road (NCSR 1214), which is the center of the curve of the southernmost right-of-way line of River Road as shown on the aforesaid map; thence along and with the southernmost right-of-way line of River Road in a northeasterly direction to the centerline of Morris Branch; thence along and with the centerline of Morris Branch in a southeasterly and an easterly direction to that point where the centerline of Morris Branch intersects with the centerline of Jimmy's Creek; thence along and with the centerline of Jimmy's Creek in a northerly direction to that point where the centerline of Jimmy's Creek intersects with the centerline of Spring Branch; thence along and with the centerline of Spring Branch in a northeasterly direction to the southwestern corner of Lot No. 9 of the Patterson Farm, as recorded in Map Book 2, at Page 75, in the office of the Register of Deeds of Craven County; thence along and with the southernmost line of said lot in an easterly direction to the westernmost right-of-way line of Pembroke-Chelsea Road (NCSR 1200); thence along and with the westernmost line of Pembroke-Chelsea Road in a southwesterly direction to that point where the westernmost right-of-way line of Pembroke-Chelsea Road intersects with a line extended at a right angle to the right-of-way line of Pembroke-Chelsea Road from the southwestern corner of New Bern Memorial Cemetery; thence in a straight line in an easterly direction, crossing Pembroke-Chelsea Road at a right angle to the right-of-way line of Pembroke-Chelsea Road to the southwestern corner of New Bern Memorial Cemetery; thence along and with the southernmost line of New Bern Memorial Cemetery in an easterly direction to the westernmost line of the Plan of Bellefern--Section Six--Phase 2, as recorded in Plat Cabinet D, at Slide 559, in the office of the Register of Deeds of Craven County; thence along and with the westernmost line of said subdivision in a northeasterly direction to the northwestern corner of Lot 11 of said subdivision; thence along and with the northernmost line of said lot in an easterly direction to the southwestern corner of Lot No. 12 in the Plan of Bellefern--Section Six--Phase 1, as recorded in Plat Cabinet D, at Slide 531, in the office of the Register of Deeds of Craven County; thence along and with the westernmost lines of said lot and Lot No. 13 of said subdivision to the southeastern corner of the J.R. Harris and wife, Ruby H. Harris, lot, as recorded in Book 515, at Page 505, in the office of the Register of Deeds of Craven County; thence along and with the southernmost line of said lot in a westerly direction to the southwestern corner of said lot, the southeastern corner of the property of the Bootery, Inc., which was annexed to the City of New Bern by ordinance adopted by the Board of Aldermen of the City of New Bern on June 27, 1989; thence along and with the eastern line of the Bootery property to the southernmost right-of-way line of Trent Road; thence along and with the southernmost right-of-way line of Trent Road in an easterly direction to the point at which the easternmost right-of-way line of Highland Avenue intersects the southernmost right-of-way line of Trent Road (NCSR 1278); thence from said point of intersection along and with the easternmost right-of-way line of Highland Avenue in a southeasterly direction to the northwestern corner of Lot No.1, Block D, of Highland Park Subdivision, as recorded in Map Book 7, at Page 23, in the office of

the Register of Deeds of Craven County; thence along and with the northernmost lines of said block in a northeasterly direction to the northernmost corner of Lot No. 8 of said subdivision; thence in a straight line in a northerly direction to the westernmost corner of Lot No. 21, Block E, of said subdivision; thence along and with the northernmost lines of said subdivision in a northerly and an easterly direction to the easternmost corner of said subdivision; thence along and with the easternmost line of said subdivision in a southwesterly direction to a point in the easternmost line of said subdivision, being the northwestern corner of Lot No. 31, Fox Hollow--Section One, as recorded in Map Book 11, at Page 55, in the office of the Register of Deeds of Craven County; thence along and with the northeasternmost line of said subdivision in a southeasterly direction to the northeastern corner of Lot No. 32 of said subdivision; thence along and with the southeasternmost line of said subdivision in a southwesterly direction to the southeastern corner of Lot No. 37 of said subdivision, being a point in the northernmost line of Fox Hollow--Section Three, as recorded in Plat Cabinet A, at Slide 82-B, in the office of the Register of Deeds of Craven County; thence along and with the northernmost lines of said subdivision and the property designated 'Reserved' on the plat thereof to the westernmost right-of-way line of Pembroke-Country Club Road (NCSR 1200); thence in a straight line, in a southeasterly direction, crossing Pembroke-Country Club Road at a right angle to the right-of-way line of Pembroke-Country Club Road to a point in the easternmost right-of-way line of Pembroke-Country Club Road; thence along and with the easternmost right-of-way line of Pembroke-Country Club Road in a southwesterly direction to that point where the easternmost right-of-way line of Pembroke-Country Club Road intersects with the northeasternmost right-of-way line of Trent Shores Drive (NCSR 1206); thence along and with the northeasternmost right-of-way line of Trent Shores Drive in a southeasterly direction to the westernmost corner on Trent Shores Drive of Lot No. 9 of Trent Shores--Section E, as recorded in Plat Cabinet B, at Slide 69, in the office of the Register of Deeds of Craven County; thence along and with the western line of said lot in a northerly direction to the northwestern corner of said lot; thence along and with the northern line of said lot and Lot No. 10 of said subdivision, in an easterly direction to the northeastern corner of said Lot No. 10; thence along and with the eastern line of said lot in a southerly direction to the easternmost corner on Trent Shores Drive of said lot; thence along and with the northeasternmost right-of-way line of Trent Shores Drive in a southeasterly direction to the northernmost corner on Trent Shores Drive of Lot No. 22 of Trent Shores Subdivision--Lots 21 and 22, Section A, 'Addition,' as recorded in Plat Cabinet D, at Slide 501, in the office of the Register of Deeds of Craven County; thence along and with the northwesternmost line of said lot in a northeasterly direction to the northernmost corner of said lot; thence along and with the northeasternmost line of said lot in a southeasterly direction to the northernmost shoreline of Trent River; thence in a straight line, continuing in the same direction, to the channel of Trent River; thence northeasterly and easterly along and with the channel of Trent River to the point of intersection of the channels of the Neuse and Trent Rivers, the point of BEGINNING.

THE FOLLOWING TRACTS ARE NONCONTIGUOUS TO THE PRIMARY CORPORATE LIMITS OF THE CITY OF NEW BERN, ANNEXED TO THE CITY PURSUANT TO THE AUTHORITY CONTAINED IN PART 4, 'ANNEXATION OF NONCONTIGUOUS AREAS,' OF CHAPTER 160A OF THE NORTH CAROLINA GENERAL STATUTES.

PARCEL 1

SATELLITE ANNEXATION DESCRIPTION OF
WEYERHAEUSER'S CRAVEN 32 AND THE REGISTER PARCEL

All that certain tract or parcel of land lying and being in Township No. 7, Craven County, North Carolina, and being more particularly described as follows:

BEGINNING at a concrete marker now or formerly W.G. Taylor's southwest corner on the east shore of Brice's Creek at a point 12,012 feet, more or less, northwardly along the shore of said creek from the mouth of the run of Boleyn Swamp and said point of BEGINNING, being more particularly defined as being 9,500 feet, more or less, from the shoreline at Wards Point, the closest land within the corporate limits of the City of New Bern; thence from said point of beginning with and along the Taylor's line North 86° East 1,268 feet, more or less; thence due East 465 feet, more or less; thence North 86° 20' East 1,980 feet, more or less; thence North 86° East 355 feet, more or less; thence North 86° 20' East 1,188 feet, more or less, to a concrete marker in the west edge of the right-of-way of the Old New Bern to Morehead Road (now SR 1111); thence leaving the line of W. G. Taylor and running along the west side of said road right-of-way South 3° 30' West 1,155 feet, more or less, to a concrete marker in the center of a ditch; thence crossing the Old New Bern to Morehead Road (now SR 1111) and up the center of said ditch with H. Wooten's line North 65° 30' East 241 feet, more or less; thence South 76° 15' East 660 feet, more or less; thence South 74° 15' East 901 feet, more or less, to a concrete marker in the west side of an old road; thence with the west side of said road North 13° 20' East 1,626 feet, more or less, to H. Wooten's northeast corner in the west side of said road; thence North 86° 30' East 30 feet, more or less, to a corner marker, now or formerly T. A. Grantham's northwest corner; thence with Grantham's line South 24° 15' East 1,673 feet, more or less, to a concrete marker, a corner of said Grantham; thence with Grantham's line North 56° East 825 feet, more or less, to a concrete marker in the west edge of the right-of-way of the Atlantic & North Carolina Railroad; thence with the edge of said right-of-way South 19° 20' East 1,551 feet, more or less, to a new point cornering; thence across the right-of-way of the Atlantic & North Carolina Railroad North 69° 44' 39" East 100.02 feet to an iron pipe the northwesterly corner of the Weyerhaeuser Real Estate Company, formerly the Evelyn C. Register property; thence North 69° 44' 39" East 380.98 feet to an iron pipe in the westerly right-of-way U.S. Highway 70 cornering; thence with and along the westerly right-of-way of U.S. Highway 70 South 20° 15' 21" East 400 feet to an iron pipe cornering; thence South 61° 49' 39" West 392.03 feet to an iron pipe in the easterly right of the Atlantic & North Carolina Railroad; thence continuing across the Atlantic & North Carolina Railroad South 61° 49' 39" West 101.20 feet to a point in

the westerly right-of-way of said railroad cornering; thence with and along the westerly right-of-way of the Atlantic & North Carolina Railroad South 19° 20' East 2,079 feet, more or less, to a concrete marker, now or formerly a corner of J. S. McGowan; thence leaving said railroad right-of-way South 66° 25' West 313 feet, more or less to a poplar and iron pipe, a corner of said McGowan; thence North 38° 10' West 785 feet, more or less, to a granite marker; thence South 62° 30' West 132 feet, more or less to a concrete marker in the run of Boleyn Swamp, a corner of J. S. McGowan; thence down the run of Boleyn Swamp westwardly with the line of J.S. McGowan across SR 1111 and with the line now or formerly T. A. Grantham 6,732 feet more or less, to Brice's Creek; thence down the east shore of said creek northwardly 12,012 feet, more or less to the BEGINNING, containing 1,043.1 acres, more or less.

The above parcel is recorded in Deed Book 348, Page 6; Deed book 624, Page 2; Deed Book 1399, Page 920; Map Book 1, Page 144; and Plat Cabinet F, Slide 157-H, of the Craven County Register of Deeds.

PARCEL 2

MILTON AND ANNA ASKEW, HIGHWAY 17 SOUTH

All those certain tracts or parcels of land lying and being situate in Number Eight Township, Craven County, North Carolina, and being more particularly described as follows:

TRACT ONE

Beginning at a point which lies North 18° 29' West 35 feet from the southeastern corner of the property conveyed by Wray to Dentico by deed recorded in Book 810, Page 716, in the office of the Register of Deeds of Craven County. Thence from this point of beginning so located continuing North 18° 29' West 212.4 feet to a point; thence North 11° 43' West 586.2 feet to the southern line of the abandoned Seaboard Coastline Railroad right-of-way; thence along and with the southern line of the abandoned Seaboard Coastline Railroad right-of-way North 84° 7' East 424.7 feet to a point; thence South 0° 3' West 821.1 feet to a point; thence North 88° 59' West to the point of beginning. Also included is all the property lying between the northern line of the aforesaid property and the centerline of the abandoned Seaboard Coastline Railroad right-of-way between the eastern and western lines of the aforesaid property extended northwardly to the centerline of the abandoned Seaboard Coastline Railroad right-of-way.

TRACT TWO

Beginning at a point in the western line of the property described by deed recorded in Book 490, Page 295, from Harrison to Harrison, which said point of beginning lies North 18° 8' West 35 feet along the western line of said Harrison parcel from the northern line of U.S. Highway No. 17. Thence from this point of beginning so located North 18° 8' West 212.7 feet along the western line of the Harrison parcel to a point in said line;

thence North 89° 6' West 420 feet along the southern line of the property described by deed recorded in Book 490, Page 293, from Harrison to Harrison; thence South 18° 8' East 212.7 feet to a point; thence South 89° 6' East a straight line to the point of beginning.

TRACT THREE

All that certain lot, tract or parcel of land located west of the City of New Bern, bounded by the centerline of the abandoned Atlantic Coast Line Railroad on the north, Sherwood Miller Harrison (formerly) on the east, Tract Two described above on the south, and the heirs of Mrs. Don White (formerly) on the west, consisting of '5.57 acres,' and more fully described and shown on the map prepared by Darrel D. Daniels, P.E., dated May 3, 1973, and to which map reference is hereby made for a more perfect description as to metes and bounds, said map being attached to deed recorded in Book 814, Page 941. Said property is described by metes and bounds as follows: Beginning at a point in the western line of the Harrison property which said point of beginning marks the northeastern corner of Tract Two described above. Thence from this point of beginning so located along and with the northern line of Tract Two North 89° 6' West 420 feet to a point; thence North 18° 8' West 528.25 feet to the southern line of the Seaboard Coastline Railroad right-of-way; thence North 81° 56' East 469.78 feet to a point; thence South 11° 43' East 586.70 feet to the point of beginning. Also included is the property lying north of the property shown on the map recorded in Book 814, Page 941, south of the centerline of the abandoned railroad and between the side lot lines of said tract extended northwardly.

PARCEL 3
STEPHEN BEST, et ux - HIGHWAY 55

All that certain tract or parcel of land situate, lying, and being in Number Eight Township, Craven County, North Carolina, and being more particularly described as follows:

Beginning at a point in the northeastern right-of-way line of N.C. Highway 55 (Old U.S. 70), which said point of beginning is located South 57°15' East, 311.55 feet along and with said right-of-way line from the center of an old ditch which is the southernmost corner of property now or formerly owned by the Craven County Board of Education depicted on a plat of record in Map Book 4, at Page 69, in the office of the Register of Deeds of Craven County; thence from said point of beginning, which is marked by an iron pipe, North 32°45' East, 296.00 feet to an iron pipe; thence South 65°00' East, 96.87 feet to an iron pipe; thence South 32°45' West, 309.06 feet to the right-of-way line of said highway; thence North 57°15' West along and with said right-of-way line 95.99 feet to the point of beginning.

Being Lot 1 of the division of property of the Roscoe Jackson, Sr. Heirs, a plat of which was prepared by Lonnie Nelms, Jr., R.L.S., November 2, 1987."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

S.B. 81 **CHAPTER 232**

AN ACT TO ENACT THE REVISED ARTICLE 3 OF THE UNIFORM COMMERCIAL CODE AND CONFORMING AND MISCELLANEOUS AMENDMENTS TO ARTICLES 1 AND 4 OF THE UNIFORM COMMERCIAL CODE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 25 of the General Statutes is rewritten to read:

"ARTICLE 3.

"Negotiable Instruments.

"PART 1.

"GENERAL PROVISIONS AND DEFINITIONS.

"*§ 25-3-101. Short title.*

This Article may be cited as Uniform Commercial Code -- Negotiable Instruments.

"*§ 25-3-102. Subject matter.*

(a) This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 4A, or to securities governed by Article 8.

(b) If there is conflict between this Article and Article 4 or 9, Articles 4 and 9 govern.

(c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

"*§ 25-3-103. Definitions.*

(a) In this Article:

(1) 'Acceptor' means a drawee who has accepted a draft.

(2) 'Drawee' means a person ordered in a draft to make payment.

(3) 'Drawer' means a person who signs or is identified in a draft as a person ordering payment.

(4) 'Good faith' means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(5) 'Maker' means a person who signs or is identified in a note as a person undertaking to pay.

(6) 'Order' means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to

one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) 'Ordinary care' in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.

(8) 'Party' means a party to an instrument.

(9) 'Promise' means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) 'Prove' with respect to a fact means to meet the burden of establishing the fact (G.S. 25-1-201(8)).

(11) 'Remitter' means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this Article and the sections in which they appear are:

'Acceptance'	G.S. 25-3-409.
'Accommodated party'	G.S. 25-3-419.
'Accommodation party'	G.S. 25-3-419.
'Alteration'	G.S. 25-3-407.
'Anomalous indorsement'	G.S. 25-3-205.
'Blank indorsement'	G.S. 25-3-205.
'Cashier's check'	G.S. 25-3-104.
'Certificate of deposit'	G.S. 25-3-104.
'Certified check'	G.S. 25-3-409.
'Check'	G.S. 25-3-104.
'Consideration'	G.S. 25-3-303.
'Draft'	G.S. 25-3-104.
'Holder in due course'	G.S. 25-3-302.
'Incomplete instrument'	G.S. 25-3-115.
'Indorsement'	G.S. 25-3-204.
'Indorser'	G.S. 25-3-204.
'Instrument'	G.S. 25-3-104.
'Issue'	G.S. 25-3-105.
'Issuer'	G.S. 25-3-105.
'Negotiable instrument'	G.S. 25-3-104.
'Negotiation'	G.S. 25-3-201.
'Note'	G.S. 25-3-104.
'Payable at a definite time'	G.S. 25-3-108.
'Payable on demand'	G.S. 25-3-108.

'Payable to bearer'	G.S. 25-3-109.
'Payable to order'	G.S. 25-3-109.
'Payment'	G.S. 25-3-602.
'Person entitled to enforce'	G.S. 25-3-301.
'Presentment'	G.S. 25-3-501.
'Reacquisition'	G.S. 25-3-207.
'Special indorsement'	G.S. 25-3-205.
'Teller's check'	G.S. 25-3-104.
'Transfer of instrument'	G.S. 25-3-203.
'Traveler's check'	G.S. 25-3-104.
'Value'	G.S. 25-3-303.

(c) The following definitions in other Articles apply to this Article:

'Bank'	G.S. 25-4-105.
'Banking day'	G.S. 25-4-104.
'Clearing house'	G.S. 25-4-104.
'Collecting bank'	G.S. 25-4-105.
'Depositary bank'	G.S. 25-4-105.
'Documentary draft'	G.S. 25-4-104.
'Intermediary bank'	G.S. 25-4-105.
'Item'	G.S. 25-4-104.
'Payor bank'	G.S. 25-4-105.
'Suspends payments'	G.S. 25-4-104.

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

"*§ 25-3-104. Negotiable instrument.*

(a) Except as provided in subsections (c) and (d) of this section, 'negotiable instrument' means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) Is payable on demand or at a definite time; and

(3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) 'Instrument' means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a) of this section, except subdivision (1), and otherwise falls within the definition of 'check' in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.

(e) An instrument is a 'note' if it is a promise and is a 'draft' if it is an order. If an instrument falls within the definition of both 'note' and 'draft', a person entitled to enforce the instrument may treat it as either.

(f) 'Check' means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as 'money order'.

(g) 'Cashier's check' means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) 'Teller's check' means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) 'Traveler's check' means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term 'traveler's check' or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) 'Certificate of deposit' means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

"§ 25-3-105. Issue of instrument.

(a) 'Issue' means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) 'Issuer' applies to issued and unissued instruments and means a maker or drawer of an instrument.

"§ 25-3-106. Unconditional promise or order.

(a) Except as provided in this section, for the purposes of G.S. 25-3-104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of G.S. 25-3-104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the

issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of G.S. 25-3-104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

"*§ 25-3-107. Instrument payable in foreign money.*

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

"*§ 25-3-108. Payable on demand or at definite time.*

(a) A promise or order is 'payable on demand' if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

(b) A promise or order is 'payable at a definite time' if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(c) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

"*§ 25-3-109. Payable to bearer or to order.*

(a) A promise or order is payable to bearer if it:

(1) States that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(2) Does not state a payee; or

(3) States that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to G.S. 25-3-205(a). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to G.S. 25-3-205(b).

"*§ 25-3-110. Identification of person to whom instrument is payable.*

(a) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the

name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(b) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(c) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(1) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(2) If an instrument is payable to (i) a trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named, (ii) a person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative, (iii) a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization, or (iv) an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(d) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

"§ 25-3-111. *Place of payment.*

Except as otherwise provided for items in Article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the

instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

"§ 25-3-112. *Interest.*

(a) Unless otherwise provided in the instrument, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

"§ 25-3-113. *Date of instrument.*

(a) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in G.S. 25-4-401(c), an instrument payable on demand is not payable before the date of the instrument.

(b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

"§ 25-3-114. *Contradictory terms of instrument.*

If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

"§ 25-3-115. *Incomplete instrument.*

(a) 'Incomplete instrument' means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(b) Subject to subsection (c) of this section, if an incomplete instrument is an instrument under G.S. 25-3-104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under G.S. 25-3-104, but, after completion, the requirements of G.S. 25-3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

(c) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under G.S. 25-3-407.

(d) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

"§ 25-3-116. *Joint and several liability; contribution.*

(a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in G.S. 25-3-419(e) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(c) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of this section of a party having the same joint and several liability to receive contribution from the party discharged.

"§ 25-3-117. Other agreements affecting instrument.

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

"§ 25-3-118. Statute of limitations.

(a) Except as provided in subsection (e) of this section, an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in subsection (d) or (e) of this section, if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

(c) Except as provided in subsection (d) of this section, an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had

and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this Article and not governed by this section must be commenced within three years after the cause of action accrues.

(h) A seal instrument otherwise subject to this Article is governed by the time limits of G.S. 1-47(2).

"*§ 25-3-119. Notice of right to defend action.*

In an action for breach of an obligation for which a third person is answerable over pursuant to this Article or Article 4, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless, after seasonable receipt of the notice, the person notified does come in and defend.

"PART 2.

"NEGOTIATION, TRANSFER, AND INDORSEMENT.

"*§ 25-3-201. Negotiation.*

(a) 'Negotiation' means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

"*§ 25-3-202. Negotiation subject to rescission.*

(a) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.

(b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

"*§ 25-3-203. Transfer of instrument; rights acquired by transfer.*

(a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this Article and has only the rights of a partial assignee.

"§ 25-3-204. *Indorsement.*

(a) 'Indorsement' means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) 'Indorser' means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

"§ 25-3-205. *Special indorsement; blank indorsement; anomalous indorsement.*

(a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a 'special indorsement'. When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in G.S. 25-3-110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a 'blank indorsement'. When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) 'Anomalous indorsement' means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

"§ 25-3-206. *Restrictive indorsement.*

(a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(c) If an instrument bears an indorsement (i) described in G.S. 25-4-201(b), or (ii) in blank or to a particular bank using the words 'for deposit', 'for collection', or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(1) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.

(2) A depositary bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(3) A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(4) Except as otherwise provided in subdivision (3), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(d) Except for an indorsement covered by subsection (c) of this section, if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(1) Unless there is notice of breach of fiduciary duty as provided in G.S. 25-3-307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(2) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(e) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a

converter under subsection (c) of this section or has notice or knowledge of breach of fiduciary duty as stated in subsection (d) of this section.

(f) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

"*§ 25-3-207. Reacquisition.*

Reacquisition of an instrument occurs if it is transferred to a former holder by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

"PART 3.

"ENFORCEMENT OF INSTRUMENTS.

"*§ 25-3-301. Person entitled to enforce instrument.*

'Person entitled to enforce' an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to G.S. 25-3-309 or G.S. 25-3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

"*§ 25-3-302. Holder in due course.*

(a) Subject to subsection (c) of this section and G.S. 25-3-106(d), 'holder in due course' means the holder of an instrument if:

(1) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(2) The holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in G.S. 25-3-306, and (vi) without notice that any party has a defense or claim in recoupment described in G.S. 25-3-305(a).

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a) of this section, but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

(d) If, under G.S. 25-3-303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

"*§ 25-3-303. Value and consideration.*

(a) An instrument is issued or transferred for value if:

(1) The instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(2) The transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(3) The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) The instrument is issued or transferred in exchange for a negotiable instrument; or

(5) The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) 'Consideration' means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due, and the promise has not been performed. If an instrument is issued for value as stated in subsection (a) of this section, the instrument is also issued for consideration.

"*§ 25-3-304. Overdue instrument.*

(a) An instrument payable on demand becomes overdue at the earliest of the following times:

(1) On the day after the day demand for payment is duly made;

(2) If the instrument is a check, 90 days after its date; or

(3) If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

(1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

"§ 25-3-305. *Defenses and claims in recoupment.*

(a) Except as stated in subsection (b) of this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) A defense of the obligor stated in another section of this Article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1) of this section, but is not subject to defenses of the obligor stated in subsection (a)(2) of this section or claims in recoupment stated in subsection (a)(3) of this section against a person other than the holder.

(c) Except as stated in subsection (d) of this section, in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (G.S. 25-3-306) of another person, but the other person's claim to the instrument may be asserted by

the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) of this section that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

"§ 25-3-306. Claims to an instrument.

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

"§ 25-3-307. Notice of breach of fiduciary duty.

(a) In this section:

(1) 'Fiduciary' means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

(2) 'Represented person' means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in subdivision (1) is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty or knows such facts that his action in taking the instrument is not in good faith.

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment

of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

"§ 25-3-308. *Proof of signatures and status as holder in due course.*

(a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under G.S. 25-3-402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a) of this section, a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under G.S. 25-3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

"§ 25-3-309. *Enforcement of lost, destroyed, or stolen instrument.*

(a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) of this section must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, G.S. 25-3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

"§ 25-3-310. *Effect of instrument on obligation for which taken.*

(a) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation.

Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(b) Unless otherwise agreed and except as provided in subsection (a) of this section, if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(3) Except as provided in subdivision (4), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in subsection (a) or (b) of this section is taken for an obligation, the effect is (i) that stated in subsection (a) of this section if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (b) of this section in any other case.

"*§ 25-3-311. Accord and satisfaction by use of instrument.*

(a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) of this section applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d) of this section, a claim is not discharged under subsection (b) of this section when the claimant, if an organization,

proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

"§ 25-3-312. Lost, destroyed, or stolen cashier's check, teller's check, or certified check.

(a) In this section:

(1) 'Check' means a cashier's check, teller's check, or certified check.

(2) 'Claimant' means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(3) 'Declaration of loss' means a written statement, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(4) 'Obligated bank' means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the 90th day following the date of the check, in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance, in the case of a certified check.

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to G.S. 25-4-302(a)(1), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under subsection (b)(4) of this section and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) of this section and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or G.S. 25-3-309.

"PART 4.

"LIABILITY OF PARTIES.

"§ 25-3-401. Signature.

(a) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under G.S. 25-3-402.

(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

"§ 25-3-402. Signature by representative.

(a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the 'authorized signature of the represented person' and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to subsection (c) of this section, if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity, or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

"*§ 25-3-403. Unauthorized signature.*

(a) Unless otherwise provided in this Article or Article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this Article.

(b) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this Article which makes the unauthorized signature effective for the purposes of this Article.

"*§ 25-3-404. Impostors; fictitious payees.*

(a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) If (i) a person whose intent determines to whom an instrument is payable (G.S. 25-3-110(a) or (b)) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(1) Any person in possession of the instrument is its holder.

(2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) Under subsection (a) or (b) of this section, an indorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.

(d) With respect to an instrument to which subsection (a) or (b) of this section applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

"*§ 25-3-405. Employer's responsibility for fraudulent indorsement by employee.*

(a) In this section:

(1) 'Employee' includes an independent contractor and employee of an independent contractor retained by the employer.

(2) 'Fraudulent indorsement' means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(3) 'Responsibility' with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. 'Responsibility' does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure

substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(c) Under subsection (b) of this section, an indorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person or (ii) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to the name of that person.

"§ 25-3-406. *Negligence contributing to forged signature or alteration of instrument.*

(a) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Under subsection (a) of this section, if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Under subsection (a) of this section, the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b) of this section, the burden of proving failure to exercise ordinary care is on the person precluded.

"§ 25-3-407. *Alteration.*

(a) 'Alteration' means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(b) Except as provided in subsection (c) of this section, an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(c) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

"§ 25-3-408. *Drawee not liable on unaccepted draft.*

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

"§ 25-3-409. *Acceptance of draft; certified check.*

(a) 'Acceptance' means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective

when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(b) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(c) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) 'Certified check' means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) of this section or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

"§ 25-3-410. Acceptance varying draft.

(a) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(b) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(c) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

"§ 25-3-411. Refusal to pay cashier's checks, teller's checks, and certified checks.

(a) In this section, 'obligated bank' means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages under subsection (b) of this section are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law.

"§ 25-3-412. Obligation of issuer of note or cashier's check.

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in G.S. 25-3-115 and G.S. 25-3-

407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under G.S. 25-3-415.

"*§ 25-3-413. Obligation of acceptor.*

(a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable 'as originally drawn' or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in G.S. 25-3-115 and G.S. 25-3-407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under G.S. 25-3-414 or G.S. 25-3-415.

(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

"*§ 25-3-414. Obligation of drawer.*

(a) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in G.S. 25-3-115 and G.S. 25-3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under G.S. 25-3-415.

(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(d) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under G.S. 25-3-415(a) and (c).

(e) If a draft states that it is drawn 'without recourse' or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (b) of this section to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) of this section is not effective if the draft is a check.

(f) If (i) a check is not presented for payment or given to a depositary bank for collection within 30 days after its date, (ii) the drawee suspends payments after expiration of the 30-day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

"*§ 25-3-415. Obligation of indorser.*

(a) Subject to subsections (b), (c), (d), and (e) of this section and to G.S. 25-3-419(d), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed, or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in G.S. 25-3-115 and G.S. 25-3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) If an indorsement states that it is made 'without recourse' or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (a) of this section to pay the instrument.

(c) If notice of dishonor of an instrument is required by G.S. 25-3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (a) of this section is discharged.

(d) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (a) of this section is discharged.

(e) If an indorser of a check is liable under subsection (a) of this section and the check is not presented for payment, or given to a depositary bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under subsection (a) of this section is discharged.

"§ *25-3-416. Transfer warranties.*

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(1) The warrantor is a person entitled to enforce the instrument;
(2) All signatures on the instrument are authentic and authorized;
(3) The instrument has not been altered;
(4) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and
(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) A person to whom the warranties under subsection (a) of this section are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

"§ *25-3-417. Presentment warranties.*

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under G.S. 25-3-404 or G.S. 25-3-405 or the drawer is precluded under G.S. 25-3-406 or G.S. 25-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser, or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

"§ 25-3-418. *Payment or acceptance by mistake.*

(a) Except as provided in subsection (c) of this section, if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to G.S. 25-4-403 or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Except as provided in subsection (c) of this section, if an instrument has been paid or accepted by mistake and the case is not covered by subsection (a) of this section, the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.

(c) The remedies provided by subsection (a) or (b) of this section may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by G.S. 25-3-417, 25-4-208, or 25-4-407.

(d) Notwithstanding G.S. 25-4-215, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b) of this section, the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

"§ 25-3-419. *Instruments signed for accommodation.*

(a) If an instrument is issued for value given for the benefit of a party to the instrument, the 'accommodated party', and another party to the instrument, the 'accommodation party', signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party 'for accommodation'.

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d) of this section, is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in G.S. 25-3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice

when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

"§ 25-3-420. Conversion of instrument.

(a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument, or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

(b) In an action under subsection (a) of this section, the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depositary bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

"PART 5.

"DISHONOR.

"§ 25-3-501. Presentment.

(a) 'Presentment' means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

(b) The following rules are subject to Article 4, agreement of the parties, and clearing-house rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made

by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.

(2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than 2:00 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour.

"§ *25-3-502. Dishonor.*

(a) Dishonor of a note is governed by the following rules:

(1) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(2) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(3) If the note is not payable on demand and subdivision (2) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(b) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(1) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under G.S. 25-4-301 or G.S. 25-4-302, or becomes accountable for the amount of the check under G.S. 25-4-302.

(2) If a draft is payable on demand and subdivision (1) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(3) If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the

drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(4) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(c) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subdivisions (2), (3), and (4) of subsection (b), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those subdivisions.

(d) Dishonor of an accepted draft is governed by the following rules:

(1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.

(2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(e) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under G.S. 25-3-504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(f) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

"*§ 25-3-503. Notice of dishonor.*

(a) The obligation of an indorser stated in G.S. 25-3-415(a) and the obligation of a drawer stated in G.S. 25-3-414(d) may not be enforced unless (i) the indorser or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under G.S. 25-3-504(b).

(b) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Subject to G.S. 25-3-504(c), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.

"*§ 25-3-504. Excused presentment and notice of dishonor.*

(a) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is in insolvency proceedings or is dead, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(c) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

"§ 25-3-505. *Evidence of dishonor.*

(a) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(1) A document regular in form as provided in subsection (b) of this section which purports to be a protest.

(2) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor.

(3) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice-consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

"§ 25-3-506. *Collection of processing fee for returned checks.*

A person who accepts a check in payment for goods or services may charge and collect a processing fee, not to exceed twenty dollars ($20.00), for a check on which payment has been refused by the payor bank because of insufficient funds or because the drawer did not have an account at that bank if at the time the consumer presented the check to the person, a sign:

(1) Was conspicuously posted on or in the immediate vicinity of the cash register or other place where the check is received;

(2) Was in plain view of anyone paying for goods or services by check;

(3) Was no smaller than 8 by 11 inches; and

(4) Stated the amount of the fee that would be charged for returned checks.

When the drawer sends a check by mail for payment of a debt and the check is dishonored and returned, the processing fee may be collected if the drawer was given prior written notice that a fee would be charged for returned checks. Any document that clearly and conspicuously states the amount of the fee that will be charged for returned checks and is delivered to the drawer or his agent, or is mailed first-class mail to the drawer at his last known address as part of any document requesting payment of a debt satisfies this notice requirement for that payment only.

If a collection agency collects or seeks to collect on behalf of its principal a processing fee as specified in this section in addition to the sum payable of a check, the amount of such processing fee must be separately stated on the collection notice. The collection agency shall not collect or seek to collect from the drawer any sum other than the actual amount of the returned check and the specified processing fee.

"PART 6.

"DISCHARGE AND PAYMENT.

"§ 25-3-601. Discharge and effect of discharge.

(a) The obligation of a party to pay the instrument is discharged as stated in this Article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(b) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

"§ 25-3-602. Payment.

(a) Subject to subsection (b) of this section, an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under G.S. 25-3-306 by another person.

(b) The obligation of a party to pay the instrument is not discharged under subsection (a) of this section if:

(1) A claim to the instrument under G.S. 25-3-306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

"§ 25-3-603. *Tender of payment.*

(a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

"§ 25-3-604. *Discharge by cancellation or renunciation.*

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(b) Cancellation or striking out of an endorsement pursuant to subsection (a) of this section does not affect the status and rights of a party derived from the indorsement.

"§ 25-3-605. *Discharge of indorsers and accommodation parties.*

(a) In this section, the term 'indorser' includes a drawer having the obligation described in G.S. 25-3-414(d).

(b) Discharge, under G.S. 25-3-604, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.

(d) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of

recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

(e) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent (i) the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or (ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(f) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (e) of this section, the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(g) Under subsection (e) or (f) of this section, impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under Article 9 or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.

(h) An accommodation party is not discharged under subsection (c), (d), or (e) of this section unless the person entitled to enforce the instrument knows of the accommodation or has notice under G.S. 25-3-419(c) that the instrument was signed for accommodation.

(i) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral."

Sec. 2. Article 4 of Chapter 25 of the General Statutes reads as rewritten:

"ARTICLE 4.

"Bank Deposits and Collections.

"PART 1.

"GENERAL PROVISIONS AND DEFINITIONS.

"§ 25-4-101. Short title.

This ~~article shall be known and~~ Article may be cited as Uniform Commercial Code -- Bank Deposits and Collections.

"§ 25-4-102. Applicability.

~~(1)~~ (a) To the extent that items within this ~~article~~ Article are also within ~~the scope of articles~~ Articles 3 and 8, they are subject to ~~the provisions of~~ those ~~articles.~~ Articles. ~~In the event of conflict the provisions of~~ If there is conflict, this ~~article govern those of~~ Article governs ~~article 3~~ Article 3, but ~~the provisions of article~~ Article 8 ~~govern those of~~ governs this ~~article.~~ Article.

~~(2)~~ (b) The liability of a bank for action or ~~non-action~~ nonaction with respect to ~~any~~ an item handled by it for purposes of presentment, ~~payment~~ payment, or collection is governed by the law of the place where the bank is located. In the case of action or ~~non-action~~ nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

"§ 25-4-103. Variation by agreement; measure of damages; ~~certain~~ action constituting ordinary care.

~~(1)~~ (a) The effect of the provisions of this ~~article~~ Article may be varied by ~~agreement except that no agreement can~~ agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its ~~own~~ lack of good faith or failure to exercise ordinary care or ~~can~~ limit the measure of damages for ~~such~~ the lack or ~~failure; but~~ failure. However, the parties may determine by agreement ~~determine~~ the standards by which ~~such~~ the bank's responsibility is to be measured if ~~such~~ those standards are not manifestly unreasonable.

~~(2)~~ (b) Federal reserve regulations and operating ~~letters, clearing-house~~ circulars, clearing-house rules, and the ~~like,~~ like have the effect of agreements under subsection ~~(1),~~ (a) of this section, whether or not specifically assented to by all parties interested in items handled.

~~(3)~~ (c) Action or ~~non-action~~ nonaction approved by this ~~article~~ Article or pursuant to federal reserve regulations or operating ~~letters constitutes~~ circulars is the exercise of ordinary care and, in the absence of special instructions, action or ~~non-action~~ nonaction consistent with ~~clearing-house~~ clearing-house rules and the like or with a general banking usage not disapproved by this ~~article,~~ Article, is prima facie ~~constitutes~~ the exercise of ordinary care.

~~(4)~~ (d) The specification or approval of certain procedures by this ~~article does not constitute~~ Article is not disapproval of other procedures ~~which~~ that may be reasonable under the circumstances.

~~(5)~~ (e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount ~~which~~ that could not have been realized by the ~~use~~ exercise of ordinary ~~care, and where~~

care. If there is also bad ~~faith~~ faith, it includes any other ~~damages, if any, suffered by~~ damages the party suffered as a proximate consequence.

"§ 25-4-104. Definitions and index of definitions.

~~(1)~~ (a) In this ~~article~~ Article, unless the context otherwise ~~requires~~ requires:

~~(a)~~ (1) 'Account' means any deposit or credit account with a ~~bank and includes a checking, time, interest or savings account;~~ bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit.

~~(b)~~ (2) 'Afternoon' means the period of a day between noon and ~~midnight;~~ midnight.

~~(c)~~ (3) 'Banking day' means ~~that~~ the part of ~~any~~ a day on which a bank is open to the public for carrying on substantially all of its banking ~~functions;~~ functions.

~~(d)~~ (4) 'Clearing house' means ~~any~~ an association of banks or other payors regularly clearing ~~items;~~ items.

~~(e)~~ (5) 'Customer' means ~~any~~ a person having an account with a bank or for whom a bank has agreed to collect ~~items and includes~~ items, including a bank ~~carrying~~ that maintains an account ~~with~~ at another ~~bank;~~ bank.

~~(f)~~ (6) 'Documentary draft' means ~~any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;~~ a draft to be presented for acceptance or payment if specified documents, certificated securities (G.S. 25-8-102) or instructions for uncertificated securities (G.S. 25-8-308), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

(7) 'Draft' means a draft as defined in G.S. 25-3-104 or an item, other than an instrument, that is an order.

(8) 'Drawee' means a person ordered in a draft to make payment.

~~(g)~~ (9) 'Item' means ~~any instrument for the payment of money even though it is not negotiable but does not include money;~~ an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip.

~~(h)~~ (10) 'Midnight deadline' with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is ~~later;~~ later.

~~(i) 'Properly payable' includes the availability of funds for payment at the time of decision to pay or dishonor;~~

~~(j)~~ (11) 'Settle' means to pay in cash, by ~~clearing house~~ clearing-house settlement, in a charge or ~~credit or~~ credit, by

remittance, or otherwise as ~~instructed.~~ agreed. A settlement may be either provisional or ~~final;~~ final.

~~(k)~~ (12) 'Suspends payments' with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it ~~over~~ over, or that it ceases or refuses to make payments in the ordinary course of business.

~~(2)~~ (b) Other definitions applying to this ~~article~~ Article and the sections in which they appear are:

'Agreement for electronic presentment'	G.S. 25-4-110.
'Bank'	G.S. 25-4-105.
'Collecting bank'	G.S. 25-4-105.
'Depositary bank'	G.S. 25-4-105.
'Intermediary bank'	G.S. 25-4-105.
'Payor bank'	G.S. 25-4-105.
'Presenting bank'	G.S. 25-4-105.
'Presentment notice'	G.S. 25-4-110.
~~'Remitting bank'~~	~~G.S. 25-4-105.~~

~~(3)~~ (c) The following definitions in other ~~articles~~ Articles apply to this ~~article:~~ Article:

'Acceptance'	~~G.S. 25-3-410.~~
	G.S. 25-3-409.
'Alteration'	G.S. 25-3-407.
'Cashier's check'	G.S. 25-3-104.
'Certificate of deposit'	G.S. 25-3-104.
~~'Certification'~~	~~G.S. 25-3-411.~~
'Certified check'	G.S. 25-3-409.
'Check'	G.S. 25-3-104.
'Good faith'	G.S. 25-3-103.
'Draft'	G.S. 25-3-104.
'Holder in due course'	G.S. 25-3-302.
'Instrument'	G.S. 25-3-104.
'Notice of dishonor'	~~G.S. 25-3-508.~~
	G.S. 25-3-503.
'Order'	G.S. 25-3-103.
'Ordinary care'	G.S. 25-3-103.
'Person entitled to enforce'	G.S. 25-3-301.
'Presentment'	~~G.S. 25-3-504.~~
	G.S. 25-3-501.
~~'Protest'~~	~~G.S. 25-3-509.~~
'Promise'	G.S. 25-3-103.
'Prove'	G.S. 25-3-103.
~~'Secondary party'~~	~~G.S. 25-3-102.~~
'Teller's check'	G.S. 25-3-104.
'Unauthorized signature'	G.S. 25-3-403.

~~(4)~~ (d) In addition ~~article~~ Article 1 contains general definitions and principles of construction and interpretation applicable throughout this ~~article.~~ Article.

"§ 25-4-105. ~~'Depositary bank';~~ 'Bank'; 'depositary bank'; 'intermediary bank'; 'collecting bank'; 'payor bank'; 'presenting ~~bank'; 'remitting bank.~~' bank'.

In this ~~article unless the context otherwise requires:~~ Article:

(1) 'Bank' means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company.

~~(a)~~ (2) 'Depositary bank' means the first bank to ~~which~~ take an item ~~is transferred for collection~~ even though it is also the payor ~~bank;~~ bank, unless the item is presented for immediate payment over the counter.

~~(b)~~ (3) 'Payor bank' means a bank ~~by which an item is payable as drawn or accepted;~~ that is the drawee of a draft.

~~(c)~~ (4) 'Intermediary bank' means ~~any~~ a bank to which an item is transferred in course of collection except the depositary or payor ~~bank;~~ bank.

~~(d)~~ (5) 'Collecting bank' means ~~any~~ a bank handling ~~the~~ an item for collection except the payor ~~bank;~~ bank.

~~(e)~~ (6) 'Presenting bank' means ~~any~~ a bank presenting an item except a payor ~~bank;~~ bank.

~~(f) 'Remitting bank' means any payor or intermediary bank remitting for an item.~~

"§ 25-4-106. Payable through or payable at bank; collecting bank.

(a) If an item states that it is 'payable through' a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(b) If an item states that it is 'payable at' a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.

"§ ~~25-4-106.~~ 25-4-107. Separate office of a bank.

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at ~~or to~~ which action may be taken or to which notices or orders ~~shall~~ must be given under this ~~article~~ Article and under ~~article 3.~~ Article 3.

"§ ~~25-4-107.~~ 25-4-108. Time of receipt of items.

~~(1)~~ (a) For the purpose of allowing time to process items, prove ~~balances~~ balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2:00 ~~o'clock P.M.~~ p.m. or later as a ~~cut-off~~ cutoff hour for the handling of money and items and the making of entries on its books.

~~(2)~~ (b) ~~Any~~ An item or deposit of money received on any day after a ~~cut-off~~ cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

"§ ~~25-4-108.~~ 25-4-109. Delays.

(a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment ~~may, in the case~~ of a specific ~~items~~ item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, ~~modify~~ modify, or extend time limits imposed or permitted by this ~~chapter~~ Chapter for a period not ~~in excess of an~~ exceeding two additional banking ~~day~~ days without discharge of ~~secondary parties and without~~ drawers or indorsers or liability to its transferor or ~~any~~ a prior party.

~~(2)~~ (b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this ~~chapter~~ Chapter or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency ~~conditions~~ conditions, failure of equipment, or other circumstances beyond the control of the ~~bank provided it~~ bank, and (ii) the bank exercises such diligence as the circumstances require.

~~"§ 25-4-109. Process of posting.~~

~~The 'process of posting' means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:~~

~~(a) verification of any signature;~~

~~(b) ascertaining that sufficient funds are available;~~

~~(c) affixing a 'paid' or other stamp;~~

~~(d) entering a charge or entry to a customer's account;~~

~~(e) correcting or reversing an entry or erroneous action with respect to the item.~~

"§ 25-4-110. *Electronic presentment.*

(a) 'Agreement for electronic presentment' means an agreement, clearing-house rule, or federal reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of the item or information describing the item ('presentment notice') rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(b) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(c) If presentment is made by presentment notice, a reference to 'item' or 'check' in this Article means the presentment notice unless the context otherwise indicates.

"§ 25-4-111. *Statute of limitations.*

An action to enforce an obligation, duty, or right arising under this Article must be commenced within three years after the cause of action accrues.

"PART 2.

"COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS.

"§ 25-4-201. ~~*Presumption and duration of agency status*~~ *Status of collecting* ~~*banks*~~ *bank as agent and provisional status of credits; applicability of* ~~*article;*~~ *Article; item indorsed 'pay any bank.'*

~~(1)~~ (a) Unless a contrary intent clearly appears and ~~prior to~~ before the time that a settlement given by a collecting bank for an item is or becomes ~~final (subsection (3) of G.S. 25-4-211 and G.S. 25-4-212 and 25-4-213) the bank~~ final, the bank, with respect to the item, is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack or indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting ~~bank~~ bank, such as those resulting from outstanding advances on the item and ~~valid~~ rights of recoupment or setoff. ~~When~~ If an item is handled by banks for purposes of presentment, ~~payment and collection,~~ payment, collection, or return, the relevant provisions of this ~~article~~ Article apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

~~(2)~~ (b) After an item has been indorsed with the words 'pay any bank' or the like, only a bank may acquire the rights of a holder until the item has been:

~~(a)~~ (1) ~~until the item has been returned~~ Returned to the customer initiating collection; or

~~(b)~~ (2) ~~until the item has been specially~~ Specially indorsed by a bank to a person who is not a bank.

"§ 25-4-202. *Responsibility for* ~~*collection;*~~ *collection or return; when action* ~~*seasonable.*~~ *timely.*

~~(1)~~ (a) A collecting bank must ~~use~~ exercise ordinary care ~~in~~ in:

~~(a)~~ (1) ~~presenting~~ Presenting an item or sending it for presentment; ~~and~~

~~(b)~~ (2) ~~sending~~ Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor ~~or directly to the depositary bank under subsection (2) of G.S. 25-4-212~~ after learning that the item has not been paid or accepted, as the case may be; ~~and~~

~~(c)~~ (3) ~~settling~~ Settling for an item when the bank receives final settlement; and

~~(d) making or providing for any necessary protest; and~~

~~(e)~~ (4) ~~notifying~~ Notifying its transferor of any loss ~~or~~ of delay in transit within a reasonable time after discovery thereof.

~~(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.~~

(b) A collecting bank exercises ordinary care under subsection (a) of this section by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a longer

reasonable time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

~~(3)~~ (c) Subject to subsection ~~(1) (a),~~ (a)(1) of this section, a bank is not liable for the insolvency, neglect, misconduct, ~~mistake~~ mistake, or default of another bank or person or for loss or destruction of an item in the possession of others or in ~~transit or in the possession of others.~~ transit.

"§ 25-4-203. Effect of instructions.

Subject to ~~the provisions of article~~ Article 3 concerning conversion of instruments (G.S. ~~25-3-419~~ 25-3-420) and ~~the provisions of both article 3 and this article concerning~~ restrictive indorsements (G.S. 25-3-206), only a collecting bank's transferor can give instructions ~~which~~ that affect the bank or constitute notice to ~~it~~ it, and a collecting bank is not liable to prior parties for any action taken pursuant to ~~such~~ the instructions or in accordance with any agreement with its transferor.

"§ 25-4-204. Methods of sending and presenting; sending ~~direct~~ directly to payor.

~~(1)~~ (a) A collecting bank ~~must~~ shall send items by a reasonably prompt ~~method~~ method, taking into consideration ~~any~~ relevant instructions, the nature of the item, the number of ~~such~~ those items on hand, ~~and~~ the cost of collection ~~involved~~ involved, and the method generally used by it or others to present ~~such~~ those items.

~~(2)~~ (b) A collecting bank may ~~send~~ send:

~~(a)~~ (1) ~~any~~ An item ~~direct~~ directly to the payor bank;

~~(b)~~ (2) ~~any~~ An item to ~~any non-bank~~ a nonbank payor if authorized by its transferor; and

~~(c)~~ (3) ~~any~~ An item other than documentary drafts to ~~any non-bank~~ a nonbank payor, if authorized by federal reserve regulation or operating ~~letter, clearing house rule~~ circular, clearing-house rule, or the like.

~~(3)~~ (c) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

"§ 25-4-205. ~~Supplying missing indorsement; no notice from prior indorsement.~~ Depositary bank holder of unindorsed item.

If a customer delivers an item to a depositary bank for collection:

~~(1) A depositary bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words 'payee's indorsement required' or the like. In the absence of such a requirement a statement placed on the item by the depositary bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.~~

~~(2) An intermediary bank, or payor bank which is not a depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor.~~

(1) The depositary bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of G.S. 25-3-302, it is a holder in due course; and

(2) The depositary bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

"§ 25-4-206. *Transfer between banks.*

Any agreed method ~~which~~ that identifies the transferor bank is sufficient for the item's further transfer to another bank.

~~"§ 25-4-207. Warranties of customer and collecting bank on transfer or presentment of items; time for claims.~~

~~(1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that~~

~~(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and~~

~~(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith~~

~~(i) to a maker with respect to the maker's own signature; or~~

~~(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or~~

~~(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and~~

~~(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith~~

~~(i) to the maker of a note; or~~

~~(ii) to the drawer of a draft whether or not the drawer is also the drawee; or~~

~~(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided 'payable as originally drawn' or equivalent terms; or~~

~~(iv) to the acceptor of an item with respect to an alteration made after the acceptance.~~

~~(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that~~

~~(a) he has good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and~~

~~(b) all signatures are genuine or authorized; and~~

~~(c) the item has not been materially altered; and~~

~~(d) no defense of any party is good against him; and~~

~~(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.~~

~~In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.~~

~~(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of indorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.~~

~~(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim.~~

"§ 25-4-207. *Transfer warranties.*

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(1) The warrantor is a person entitled to enforce the item;

(2) All signatures on the item are authentic and authorized;

(3) The item has not been altered;

(4) The item is not subject to a defense or claim in recoupment (G.S. 25-3-305(a)) of any party that can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in G.S. 25-3-115 and G.S. 25-3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made 'without recourse' or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) of this section are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

"§ 25-4-208. *Presentment warranties.*

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under G.S. 25-3-404 or G.S. 25-3-405 or the drawer is precluded under G.S. 25-3-406 or G.S. 25-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

"§ 25-4-209. *Encoding and retention warranties.*

(a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or

other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

"§ ~~25-4-208.~~ 25-4-210. *Security interest of collecting bank in items, accompanying documents and proceeds.*

~~(1)~~ (a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of ~~either~~ either:

~~(a)~~ (1) ~~in~~ In case of an item deposited in an ~~account~~ account, to the extent to which credit given for the item has been withdrawn or applied;

~~(b)~~ (2) ~~in~~ In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit ~~given~~ given, whether or not the credit is drawn upon ~~and whether~~ or ~~not~~ there is a right of charge-back; or

~~(c)~~ (3) ~~if~~ If it makes an advance on or against the item.

~~(2)~~ (b) ~~When~~ If credit ~~which has been~~ given for several items received at one time or pursuant to a single agreement is withdrawn or applied in ~~part~~ part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

~~(3)~~ (c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying ~~documents~~ documents, and proceeds. ~~To the extent and so~~ So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to ~~the provisions of article 9~~ Article 9, ~~except that~~ but:

~~(a)~~ (1) ~~no~~ No security agreement is necessary to make the security interest enforceable (~~subsection (1) (b) of G.S. 25-9-203~~ G.S. 25-9-203(1)(a)); ~~and~~

~~(b)~~ (2) ~~no~~ No filing is required to perfect the security interest; and

~~(c)~~ (3) ~~the~~ The security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

"§ ~~25-4-209.~~ 25-4-211. *When bank gives value for purposes of holder in due course.*

For purposes of determining its status as a holder in due course, ~~the~~ a bank has given value to the extent ~~that~~ it has a security interest in an ~~item provided that~~ item, if the bank otherwise complies with the requirements of G.S. 25-3-302 on what constitutes a holder in due course.

"§ ~~25-4-210.~~ 25-4-212. Presentment by notice of item not payable by, ~~through~~ through, or at a bank; liability of ~~secondary parties.~~ drawer or indorser.

~~(1)~~ (a) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under G.S. ~~25-3-505~~ 25-3-501 by the close of the bank's next banking day after it knows of the requirement.

~~(2)~~ (b) ~~Where~~ If presentment is made by notice and ~~neither honor nor~~ payment, acceptance, or request for compliance with a requirement under G.S. ~~25-3-505~~ 25-3-501 is not received by the close of business on the day after maturity ~~or~~ or, in the case of demand ~~items~~ items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any ~~secondary party~~ drawer or indorser by sending ~~him~~ it notice of the facts.

~~"§ 25-4-211. 25-4-213. Media of remittance; provisional and final settlement in remittance cases.~~ Medium and time of settlement by bank.

~~(1) A collecting bank may take in settlement of an item~~

~~(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or~~

~~(b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or~~

~~(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or~~

~~(d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.~~

~~(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.~~

~~(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement.~~

~~(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization, -- at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;~~

~~(b) if the person receiving the settlement has authorized remittance by a nonbank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1)(b), -- at the time of the receipt of such remittance check or obligation; or~~

~~(c) if in a case not covered by subparagraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline, -- at such midnight deadline;~~

(a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by federal reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

(1) The medium of settlement is cash or credit to an account in a Federal Reserve Bank of or specified by the person to receive settlement; and

(2) The time of settlement is:

(i) With respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(ii) With respect to tender of settlement by credit in an account in a Federal Reserve Bank, when the credit is made;

(iii) With respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) With respect to tender of settlement by a funds transfer, when payment is made pursuant to G.S. 25-4A-406(a) to the person receiving settlement.

(b) If the tender of settlement is not by a medium authorized by subsection (a) of this section or the time of settlement is not fixed by subsection (a), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(c) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(1) Presents or forwards the check for collection, settlement is final when the check is finally paid; or

(2) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

"§ ~~25-4-212.~~ *25-4-214. Right of charge-back or ~~refund.~~ refund; liability of collecting bank; return of item.*

~~(1)~~ (a) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, ~~charge-back~~ charge back the amount of any credit given for the item to its customer's ~~account~~ account, or obtain refund from its ~~customer~~ customer, whether or not it is able to return the ~~item~~ item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond

the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, ~~charge-back~~ charge back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes ~~final~~ final. ~~(subsection (3) of G.S. 25-4-211 and subsections (2) and (3) of G.S. 25-4-213).~~

~~(2) Within the time and manner prescribed by this section and G.S. 25-4-301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depositary bank and may send for collection a draft on the depositary bank and obtain reimbursement. In such case, if the depositary bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.~~

(b) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

~~(3)~~ (c) A depositary bank ~~which~~ that is also the payor may ~~charge-back~~ charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (G.S. 25-4-301).

~~(4)~~ (d) The right to ~~charge-back~~ charge back is not affected ~~by~~ by:

~~(a)~~ (1) ~~prior~~ Previous use of ~~the~~ a credit given for the item; or

~~(b)~~ (2) ~~failure~~ Failure by any bank to exercise ordinary care with respect to the ~~item~~ item, but ~~any~~ a bank so failing remains liable.

~~(5)~~ (e) A failure to ~~charge-back~~ charge back or claim refund does not affect other rights of the bank against the customer or any other party.

~~(6)~~ (f) If credit is given in dollars as the equivalent of the value of an item payable in ~~a~~ foreign ~~currency~~ money, the dollar amount of any charge-back or refund ~~shall~~ must be calculated on the basis of the ~~buying sight~~ bank-offered spot rate for the foreign ~~currency~~ money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

"§ ~~25-4-213.~~ *25-4-215. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.*

~~(1)~~ (a) An item is finally paid by a payor bank when the bank has first done any of the ~~following, whichever happens first:~~ following:

~~(a)~~ (1) ~~paid~~ Paid the item in cash; ~~or~~

~~(b)~~ (2) ~~settled~~ Settled for the item without ~~reserving~~ having a right to revoke the settlement ~~and without having such right~~ under statute, ~~clearing house rule~~ clearing-house rule, or agreement; or

~~(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or~~

~~(d)~~ (3) ~~made~~ Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, ~~clearing house rule~~ clearing-house rule, or agreement.

~~Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.~~

(b) If provisional settlement for an item does not become final, the item is not finally paid.

~~(2)~~ (c) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

~~(3)~~ (d) If a collecting bank receives a settlement for an item which is or becomes ~~final~~ final, ~~(subsection (3) of G.S. 25-4-211, subsection (2) of G.S. 25-4-213)~~ the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

~~(4)~~ (e) Subject to (i) applicable law stating a time for availability of funds, and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in ~~an account with its customer~~ a customer's account becomes available for withdrawal as of ~~right~~ right:

~~(a)~~ (1) ~~in any case where~~ If the bank has received a provisional settlement for the item, when ~~such~~ the settlement becomes final and the bank has had a reasonable time to ~~learn that the settlement is final;~~ receive return of the item and the item has not been received within that time.

~~(b)~~ (2) ~~in any case where~~ If the bank is both ~~a~~ the depositary bank and ~~a~~ the payor ~~bank~~ bank, and the item is finally paid, -- at the opening of the bank's second banking day following receipt of the item.

~~(5)~~ (f) ~~A deposit of money in a bank is final when made but, subject~~ Subject to applicable law stating a time for availability of funds and any right of ~~the~~ a bank to apply ~~the~~ a deposit to an obligation of the ~~customer,~~ depositor, ~~the~~ a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day ~~following~~ after receipt of the deposit.

"§ ~~25-4-214.~~ *25-4-216. Insolvency and preference.*

~~(1)~~ (a) ~~Any~~ If an item is in or ~~coming~~ comes into the possession of a payor or collecting bank ~~which~~ that suspends payment and ~~which~~ the item ~~is~~ has not been finally ~~paid shall~~ paid, the item must be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

~~(2)~~ (b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

~~(3)~~ (c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the ~~settlement~~ settlement's becoming final if ~~such~~ the finality occurs automatically upon the lapse of

certain time or the happening of certain ~~events (subsection (3) of G.S. 25-4-211, subsections (1) (d), (2) and (3) of G.S. 25-4-213).~~ events.

~~(4)~~ (d) If a collecting bank receives from subsequent parties settlement for an ~~item~~ item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against ~~such~~ the collecting bank.

"PART 3.

"COLLECTION OF ITEMS: PAYOR BANKS.

"§ 25-4-301. Deferred posting; recovery of payment by return of items; time of ~~dishonor.~~ dishonor; return of items by payor bank.

~~(1) Where an authorized settlement~~ (a) If a payor bank settles for a demand item ~~(other than a documentary draft)~~ other than a documentary draft ~~received by a payor bank~~ presented otherwise than for immediate payment over the counter ~~has been made~~ before midnight of the banking day of ~~receipt~~ receipt, the payor bank may revoke the settlement and recover ~~any payment~~ the settlement ~~if~~ if, before it has made final payment ~~(subsection (1) of G.S. 25-4-213)~~ and before its midnight ~~deadline it~~ deadline, it:

~~(a)~~ (1) ~~returns~~ Returns the item; or

~~(b)~~ (2) ~~sends~~ Sends written notice of dishonor or nonpayment if the item is ~~held for protest or is otherwise~~ unavailable for return.

~~(2)~~ (b) If a demand item is received by a payor bank for credit on its ~~books~~ books, it may return ~~such~~ the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in ~~the preceding subsection.~~ subsection (a) of this section.

~~(3)~~ (c) Unless previous notice of dishonor has been ~~sent~~ sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

~~(4)~~ (d) An item is returned:

~~(a)~~ (1) ~~as~~ As to an item ~~received~~ presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with ~~its~~ clearing-house rules; or

~~(b)~~ (2) ~~in~~ In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to ~~his~~ instructions.

"§ 25-4-302. Payor bank's responsibility for late return of item.

~~In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of G.S. 25-4-207), settlement effected or the like, if~~

(a) If an item is presented ~~on~~ to and received by a payor ~~bank~~ bank, the bank is accountable for the amount ~~of~~ of:

~~(a)~~ (1) ~~a~~ A demand ~~item~~ item, other than a documentary ~~draft~~ draft, whether properly payable or ~~not~~ not, if the bank, in any case ~~where~~ in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, ~~regardless of~~ whether or not it is also the

depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

~~(b)~~ (2) ~~any~~ Any other properly payable item unless within the time allowed for acceptance or payment of that ~~item~~ item, the bank either accepts or pays the item or returns it and accompanying documents.

(b) The liability of a payor bank to pay an item pursuant to subsection (a) of this section is subject to defenses based on breach of a presentment warranty (G.S. 25-4-208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

"§ 25-4-303. When items subject to notice, ~~stop-order~~, stop-payment order, legal ~~process~~ process, or setoff; order in which items may be charged or certified.

~~(1)~~ (a) Any knowledge, ~~notice~~ notice, or ~~stop-order~~ stop-payment order received by, legal process served ~~upon~~ upon, or setoff exercised by a payor ~~bank, whether or not effective under other rules of law~~ bank comes too late to terminate, ~~suspend~~ suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the ~~item, comes too late to so terminate, suspend or modify such right or duty~~ item if the ~~knowlege,~~ knowledge, notice, ~~stop-order~~ stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the ~~bank has done any~~ earliest of the following:

~~(a)~~ (1) ~~accepted or certified~~ The bank accepts or certifies the item;

~~(b)~~ (2) ~~paid~~ The bank pays the item in cash;

~~(c)~~ (3) ~~settled~~ The bank settles for the item without ~~reserving~~ having a right to revoke the settlement ~~and without having such right~~ under statute, ~~clearing house rule~~ clearing-house rule, or agreement;

~~(d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or~~

~~(e)~~ (4) ~~become~~ The bank becomes accountable for the amount of the item under ~~subsection (1) (d) of G.S. 25-4-213 and~~ G.S. 25-4-302 dealing with the payor bank's responsibility for late return of ~~items.~~ item; or

(5) With respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

~~(2)~~ (b) Subject to ~~the provisions of~~ subsection ~~(1)~~ (a) of this section, items may be accepted, paid, certified or charged to the indicated account of its customer in any ~~order convenient to the bank.~~ order.

"PART 4.

"RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER.

"§ 25-4-401. When bank may charge customer's account.

~~(1)~~ (a) ~~As against its customer, a~~ A bank may charge against ~~his~~ the account ~~any~~ of a customer an item ~~which~~ that is ~~otherwise~~ properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in G.S. 25-4-403(b) for stop-payment orders, and must be received at a time and in a manner that afforded the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in G.S. 25-4-303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under G.S. 25-4-402.

~~(2)~~ (d) A bank ~~which~~ that in good faith makes payment to a holder may charge the indicated account of its customer according ~~to~~ to:

~~(a)~~ (1) ~~the~~ The original ~~tenor~~ terms of ~~his~~ the altered item; or

~~(b)~~ (2) ~~the~~ The ~~tenor~~ terms of ~~his~~ the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

"§ 25-4-402. Bank's liability to customer for wrongful ~~dishonor.~~ dishonor; time of determining insufficiency of account.

(a) Except as otherwise provided in this Article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. ~~When the dishonor occurs through mistake liability~~ Liability is limited to actual damages ~~proved. If so proximately caused and proved damages~~ proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case. This subsection does not preclude noncompensatory damages.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made

for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

"§ 25-4-403. *Customer's right to stop payment; burden of proof of loss.*

~~(1)~~ (a) A customer ~~may by order to his bank stop payment of any item payable for his account but the order must be~~ or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at ~~such~~ a time and in ~~such~~ a manner ~~as to afford~~ that affords the bank a reasonable opportunity to act on it ~~prior to~~ before any action by the bank with respect to the item described in G.S. 25-4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

~~(2) An oral order is binding upon the bank only for fourteen calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing.~~

(b) A stop-payment order is effective for six months, but it lapses after 14 calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

~~(3)~~ (c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a ~~binding stop payment~~ stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under G.S. 25-4-402.

"§ 25-4-404. *Bank not obligated to pay check more than six months old.*

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

"§ 25-4-405. *Death or incompetence of customer.*

~~(1)~~ (a) A payor or collecting bank's authority to accept, ~~pay~~ pay, or collect an item or to account for proceeds of its ~~collection~~ collection, if otherwise ~~effective~~ effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes ~~such~~ the authority to accept, pay, ~~collect~~ collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

~~(2)~~ (b) Even with ~~knowledge~~ knowledge, a bank may for ten days after the date of death pay or certify checks drawn on or ~~prior to~~ before that date unless ordered to stop payment by a person claiming an interest in the account.

~~(3)~~ (c) A transaction, although subject to this ~~article~~ Article, is also subject to G.S. 105-24, ~~and G.S.~~ 41-2.1, 53-146.1, 54-109.58, and 54B-

129, and in case of conflict between the provisions of this section and either of those sections, the provisions of those sections control.

"§ 25-4-406. Customer's duty to discover and report unauthorized signature or alteration.

~~(1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof. A customer will be considered to have acted with reasonable care and promptness if he notifies the bank within 60 days of receipt of the statement of account accompanied by such items.~~

(a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a) of this section, the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

~~(2)~~ (d) If the bank ~~establishes~~ proves that the customer ~~failed~~ failed, with respect to an ~~item~~ item, to comply with the duties imposed on the customer by subsection ~~(1)~~ (c) of this section, the customer is precluded from asserting against the ~~bank~~ bank:

~~(a)~~ (1) ~~his~~ The customer's unauthorized signature or any alteration on the ~~item~~ item, if the bank also ~~establishes~~ proves that it suffered a loss by reason of ~~such~~ the failure; and

~~(b)~~ (2) ~~an~~ The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank ~~after the first item and statement was available to the customer for a reasonable period not exceeding fourteen calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration~~ if the payment was made before the bank received notice from

the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

~~(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).~~

(e) If subsection (d) of this section applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) of this section and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) of this section does not apply.

~~(4)~~ (f) Without regard to care or lack of care of either the customer or the ~~bank~~ bank, a customer who does not within one year ~~from the time~~ after the statement ~~and~~ or items are made available to the customer (subsection ~~(1)~~ (a) of this section) discover and report ~~his~~ the customer's unauthorized signature on or any alteration ~~on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement~~ on the item is precluded from asserting against the bank ~~such~~ the unauthorized signature ~~or indorsement~~ or ~~such~~ alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under G.S. 25-4-208 with respect to the unauthorized signature or alteration to which the preclusion applies.

~~(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.~~

"§ 25-4-407. Payor bank's right to subrogation on improper payment.

If a payor bank has paid an item over the ~~stop payment~~ order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank ~~shall be~~ is subrogated to the ~~rights~~ rights:

~~(a)~~ (1) ~~of~~ Of any holder in due course on the item against the drawer or maker; ~~and~~

~~(b)~~ (2) ~~of~~ Of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

~~(c)~~ (3) ~~of~~ Of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

"PART 5.

"COLLECTION OF DOCUMENTARY DRAFTS.

"§ 25-4-501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.

A bank ~~which~~ that takes a documentary draft for collection ~~must~~ shall present or send the draft and accompanying documents for ~~presentment~~ presentment, and upon learning that the draft has not been paid or accepted in due ~~course~~ course, ~~must~~ shall seasonably notify its customer of ~~such~~ the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

"§ 25-4-502. Presentment of 'on arrival' drafts.

~~When~~ If a draft or the relevant instructions require presentment 'on arrival,' 'when goods arrive' or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of ~~such~~ the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

"§ 25-4-503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.

Unless otherwise instructed and except as provided in ~~article 5~~ Article 5, a bank presenting a documentary ~~draft~~ draft:

~~(a)~~ (1) ~~must~~ Must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

~~(b)~~ (2) ~~upon~~ Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft ~~or~~ or, if the presenting bank does not choose to utilize ~~his~~ the referee's ~~services~~ services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons ~~therefor~~ therefor, and must request instructions.

~~But~~ However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for ~~such~~ those expenses.

"§ 25-4-504. Privilege of presenting bank to deal with goods; security interest for expenses.

~~(1)~~ (a) A presenting bank ~~which~~ that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

~~(2)~~ (b) For its reasonable expenses incurred by action under subsection ~~(1)~~ (a) of this section, the presenting bank has a lien upon the goods or

their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien."

Sec. 3. G.S. 25-1-201 reads as rewritten:

"§ *25-1-201. General definitions.*

Subject to additional definitions contained in the subsequent articles of this chapter which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this chapter:

(1) 'Action' in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) 'Aggrieved party' means a party entitled to resort to a remedy.

(3) 'Agreement' means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter (G.S. ~~25-1-205 and 25-2-208~~). 25-1-205, 25-2-208, and 25-2A-207). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (G.S. 25-1-103). (Compare 'Contract.')

(4) 'Bank' means any person engaged in the business of banking.

(5) 'Bearer' means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) 'Bill of lading' means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. 'Airbill' means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) 'Branch' includes a separately incorporated foreign branch of a bank.

(8) 'Burden of establishing a fact' means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) 'Buyer in ordinary course of business' means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. 'Buying' may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) 'Conspicuous': A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate

ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is 'conspicuous' if it is in larger or other contrasting type or color. But in a telegram any stated term is 'conspicuous.' Whether a term or clause is 'conspicuous' or not is for decision by the court.

(11) 'Contract' means the total legal obligation which results from the parties' agreement as affected by this chapter and any other applicable rules of law. (Compare 'Agreement.')

(12) 'Creditor' includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) 'Defendant' includes a person in the position of defendant in a cross action or counterclaim.

(14) 'Delivery' with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) 'Document of title' includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) 'Fault' means wrongful act, omission or breach.

(17) 'Fungible' with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this chapter to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) 'Genuine' means free of forgery or counterfeiting.

(19) 'Good faith' means honesty in fact in the conduct or transaction concerned.

(20) 'Holder' ~~means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or indorsed to him or to his order or to bearer or in blank.~~ with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. 'Holder' with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To 'honor' is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) 'Insolvency proceedings' includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is 'insolvent' who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the Federal Bankruptcy Law.

(24) 'Money' means a medium of exchange authorized or adopted by a domestic or foreign government ~~as a part of its currency.~~ and includes a monetary unit of account established by an intergovernmental organization or by an agreement between two or more nations.

(25) A person has 'notice' of a fact ~~when~~ when:
(a) ~~he~~ The person has actual knowledge of it; or
(b) ~~he~~ The person has received a notice or notification of it; or
(c) ~~from~~ From all the facts and circumstances known to ~~him~~ the person at the time in question he has reason to know that it exists.

A person 'knows' or has 'knowledge' of a fact when he has actual knowledge of it. 'Discover' or 'learn' or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this chapter.

(26) A person 'notifies' or 'gives' a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person 'receives' a notice or notification ~~when~~ when:
(a) ~~it~~ It comes to ~~his~~ the person's attention; or
(b) ~~it~~ It is duly delivered at the place of business through which the contract was made or at any other place held out by ~~him~~ the person as the place for receipt of ~~such~~ the communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to ~~his~~ the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of ~~his~~ the individual's regular duties or

unless ~~he~~ the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) 'Organization' includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) 'Party,' as distinct from 'third party,' means a person who has engaged in a transaction or made an agreement within this chapter.

(30) 'Person' includes an individual or an organization (See G.S. 25-1-102).

(31) 'Presumption' or 'presumed' means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) 'Purchase' includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) 'Purchaser' means a person who takes by purchase.

(34) 'Remedy' means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) 'Representative' includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) 'Rights' includes remedies.

(37) 'Security interest' means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (G.S. 25-2-401) is limited in effect to a reservation of a 'security interest'. The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9 of this Chapter. The special property interest of a buyer of goods on identification of those goods to a contract for sale under G.S. 25-2-401 is not a 'security interest,' but a buyer may also acquire a 'security interest' by complying with Article 9 of this Chapter. Unless a consignment is intended as security, reservation of title thereunder is not a 'security interest' but a consignment is in any event subject to the provisions on consignment sales (G.S. 25-2-326).

(a) Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if:

(i) The original term of the lease is equal to or greater than the remaining economic life of the goods, or

(ii) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods, or

(iii) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(iv) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(b) A transaction does not create a security interest merely because it provides that:

(i) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(ii) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(iii) The lessee has an option to renew the lease or to become the owner of the goods,

(iv) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(v) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection (37):

(i) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(ii) 'Reasonably predictable' and 'remaining economic life of the goods' are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iii) 'Present value' means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) 'Send' in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) 'Signed' includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) 'Surety' includes guarantor.

(41) 'Telegram' includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) 'Term' means that portion of an agreement which relates to a particular matter.

(43) 'Unauthorized' signature ~~or indorsement~~ means one made without actual, ~~implied~~ implied, or apparent authority and includes a forgery.

(44) 'Value.' Except as otherwise provided with respect to negotiable instruments and bank collections (G.S. 25-3-303, ~~25-4-208~~ 25-4-210, and ~~25-4-209~~ 25-4-211 a person gives 'value' for rights if ~~he~~ the person acquires ~~them~~ them:

(a) ~~in~~ In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) ~~as~~ As security for or in total or partial satisfaction of a pre-existing claim; or

(c) ~~by~~ By accepting delivery pursuant to a pre-existing contract for purchase; or

(d) ~~generally,~~ Generally, in return for any consideration sufficient to support a simple contract.

(45) 'Warehouse receipt' means a receipt issued by a person engaged in the business of storing goods for hire.

(46) 'Written' or 'writing' includes printing, typewriting or any other intentional reduction to tangible form."

Sec. 4. G.S. 25-1-207 reads as rewritten:

"*§ 25-1-207. Performance or acceptance under reservation of rights.*

(1) A party ~~who~~ who, with explicit reservation of ~~rights~~ rights, performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as 'without prejudice,' 'under protest' or the like are sufficient.

(2) Subsection (1) of this section does not apply to an accord and satisfaction."

Sec. 5. G.S. 25-2-511 reads as rewritten:

"*§ 25-2-511. Tender of payment by buyer; payment by check.*

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this chapter on the effect of an instrument on an obligation ~~(G.S. 25-3-802),~~ (G.S. 25-3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment."

Sec. 6. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Commercial Code, Revised Article 3 and conforming and miscellaneous amendments to Articles 1 and 4, as the Revisor deems appropriate.

Sec. 7. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

H.B. 357 **CHAPTER 233**

AN ACT TO REPEAL PROVISIONS OF THE GENERAL STATUTES AUTHORIZING THE DEPARTMENT OF CORRECTION TO INSPECT MINES IN WHICH CONVICTS ARE EMPLOYED AND REQUIRING THE DEPARTMENT TO ESTABLISH A REVOLVING FUND FOR LOANS TO PRISONERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 148-7 is repealed.

Sec. 2. G.S. 148-18(c) is repealed.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

H.B. 515 **CHAPTER 234**

AN ACT TO CLARIFY THE DEFINITION OF THE TERM "RELEVANT MARKET AREA" IN THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. Subdivision (13b) of G.S. 20-286 reads as rewritten:

"(13b) Relevant market area or trade area. -- The area within a radius of 20 miles around an existing dealer or the area of responsibility defined in the franchise, whichever is greater; except that, where a manufacturer is seeking to establish an additional new motor vehicle dealer the relevant market area shall be as follows:

a. If the population in an area within a radius of 10 miles around the proposed site is 250,000 or more, the relevant market area shall be that area within the 10 mile radius; or
b. If the population in an area within a radius of 10 miles around the proposed site is less than 250,000, but the population in an area within a radius of 15 miles around the proposed site is 150,000 or more, the relevant market area shall be that area within the 15 mile radius; or
c. Except as defined in subparts a. and b., the relevant market area shall be the area within a radius of 20 miles around an existing dealer.

In determining population for this definition the most recent census by the U.S. Bureau of the Census or the most recent population update either from ~~the National Planning Data Corporation~~ Claritas Inc. or other similar recognized source shall be accumulated for all census tracts either wholly or partially within the relevant market area. In accumulating population for this definition, block group and block level data shall be used to apportion the population of census tracts which are only partially within the relevant market area so that population outside of the applicable radius is not included in the count."

Sec. 2. This act is effective upon ratification and shall not affect pending litigation.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

H.B. 566 **CHAPTER 235**

AN ACT TO AMEND THE LAWS RELATING TO THE POWERS OF FIDUCIARIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32-27(27) reads as rewritten:

"(27) Distribute in Cash or Kind. -- To make distribution of capital assets of the estate or trust in kind or in cash, or partially in kind and partially in cash, in divided or undivided interests, either pro rata or by a method other than pro rata among all distributees, without regard to the income tax basis or other special tax attributes of such assets, as the fiduciary finds to be most practicable and for the best interests of the distributees; and to determine the value of capital assets for the purpose of making distribution thereof if and when there

be more than one distributee thereof, which determination shall be binding upon the distributees unless clearly capricious, erroneous and inequitable; provided, however, that the fiduciary shall not exercise any power under this subdivision unless the fiduciary holds title to or an interest in the property to be distributed and is required or authorized to make distribution thereof."

Sec. 2. G.S. 32-27 is amended by adding a new subdivision to read:

"(28.1) Pay to Custodian Under Uniform Gifts or Transfers to Minors Act. -- To make any distribution of income or principal, including real property, for the benefit of any distributee to a custodian under the North Carolina Uniform Transfers to Minors Act, Chapter 33A of the General Statutes, or under the provisions of any similar statute in the state where the minor or the custodian resides. Unless a custodian is specifically named in the governing instrument, the fiduciary shall have absolute discretion to nominate any qualified individual or financial institution, including the fiduciary, to serve as custodian, and to nominate one or more substitute custodians."

Sec. 3. G.S. 32-27(25.1) reads as rewritten:

"(25.1) Divide One Trust into Several ~~Trusts.~~ Trusts and Make Distributions From Those Trusts. -- To divide the funds and properties constituting any trusts into two or more identical separate trusts that represent two or more fractional shares of the funds and properties being ~~divided.~~ divided, and to make distributions of income and principal by a method other than pro rata from the separate trusts so created as the fiduciary determines to be in the best interests of the trust beneficiaries. In any case where a single trust has been divided by the fiduciary into two separate trusts, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy such distributions from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax."

Sec. 4. G.S. 36A-136 is amended by adding a new subdivision to read:

"(24) To divide the funds and properties constituting any trust into two or more identical separate trusts that represent two or more fractional shares of the funds and properties being divided, and to make distributions of income and principal by a method other than pro rata from the separate trusts so created as the fiduciary determines to be in the best interests of the trust beneficiaries. In any case where a single trust

has been divided by the fiduciary into two separate trusts, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy such distributions by a method other than pro rata from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax."

Sec. 5. G.S. 28A-22-5 reads as rewritten:

"*§ 28A-22-5. Distribution of assets in kind in satisfaction of bequests and transfers in ~~trust for surviving spouse.~~ trust.*

(a) Subject to the provisions of subsection (b) of this section, ~~Whenever~~ whenever under any will or trust indenture the executor, trustee or other fiduciary is required to, or has an option to, satisfy a bequest or transfer in trust ~~to or for the benefit of the surviving spouse of a decedent~~ by a transfer of assets of the estate or trust in kind at the values as finally determined for federal estate tax purposes, the executor, trustee or other fiduciary shall, in the absence of contrary provisions in such will or trust indenture, be required to satisfy such bequest or transfer by the distribution of assets fairly representative of the appreciation or depreciation in the value of all property available for distribution in satisfaction of such bequest or transfer.

(b) The provisions of subsection (a) of this section shall not apply unless either:

(1) The decedent's surviving spouse is the beneficiary of the bequest or trust transfer described in subsection (a) of this section or of the residue of the estate or trust; or

(2) Any 'skip person', as that term is defined in Chapter 13 of the Internal Revenue Code of 1986, as amended, is or may be a current or future beneficiary of the bequest or trust transfer described in subsection (a) of this section or of the residue of the estate or trust, and the value of the decedent's gross estate for federal tax purposes exceeds the value of the decedent's unused generation-skipping tax exemption available under Chapter 13 of the Internal Revenue Code of 1986, as amended."

Sec. 6. G.S. 35A-1251 is amended by adding a new subdivision to read:

"(5a) To renounce any interest in property as provided in Chapter 31B of the General Statutes, or as otherwise allowed by law."

Sec. 7. G.S. 35A-1252 is amended by adding a new subdivision to read:

"(4a) To renounce any interest in property as provided in Chapter 31B of the General Statutes, or as otherwise allowed by law."

Sec. 8. G.S. 35A-1251 is amended by adding two new subdivisions to read:

"(22) To transfer to the spouse of the ward those amounts authorized for transfer to the spouse pursuant to 42 United States Code § 1396r-5.

(23) To create a trust for the benefit of the ward pursuant to 42 United States Code § 1396p(d)(4), provided that all amounts remaining in the trust upon the death of the ward, other than those amounts which must be paid to a state government, are to be paid to the estate of the ward."

Sec. 9. G.S. 35A-1116 is amended by adding a new subsection to read:

"(d) The provisions of this section shall also apply to all parties to any proceedings under this Chapter, including a guardian who has been removed from office and the sureties on the guardian's bond."

Sec. 10. G.S. 37-22(c) reads as rewritten:

"(c) Except as otherwise provided in this section, distributions made from ordinary income ~~or from realized capital gains~~ by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including short-term and long-term capital gains distributions, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal."

Sec. 11. Section 8 of Chapter 284 of the 1993 Session Laws reads as rewritten:

"Sec. 8. This act becomes effective January 1, 1994, and applies to trusts in existence on that date or established on or after that date and to tax years of decedents' estates beginning on or after that date, ~~except that Sections 4 through 7 of this act apply only to trusts established on or after January 1, 1994,~~ except that for trusts established before January 1, 1994, Sections 4 through 7 of this act apply only to any expenses described in those sections which are paid after October 1, 1995."

Sec. 12. This act is effective October 1, 1995. Section 4 of this act applies to all wills, trusts, and powers of attorney in existence on that date or executed on or after that date. Section 5 of this act applies to all distributions made on or after that date. Section 10 of this act applies to any receipt received after that date, by any trust or decedent's estate in existence on or after that date.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

S.B. 186 **CHAPTER 236**

AN ACT TO EXTEND THE SENTENCING COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 8 of Chapter 1076 of the 1989 Session Laws, as amended by Chapters 812 and 816 of the 1991 Session Laws and Chapters 253, 321, and 591 of the 1993 Session Laws, reads as rewritten:

"Sec. 8. This act is effective upon ratification, and shall expire July 1, ~~1995.~~ 1997."

Sec. 2. G.S. 164-38 reads as rewritten:

"*§ 164-38. Terms of members; compensation; expenses.*

The terms of existing members shall expire on June 30, 1995, unless they resign or are removed. New members shall be appointed or the existing members reappointed by the appointing authorities to serve until July 1, 1997, unless they resign or are removed. Members serving by virtue of elective or appointive office or as designees of such officeholders may serve only so long as the officeholders hold those respective offices. Members appointed by the Speaker of the House and the President Pro Tempore of the Senate may be removed by the appointing authority without cause. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the members first appointed. A member of the Commission may be removed only for disability, neglect of duty, incompetence, or malfeasance in office. Before removal, the member is entitled to a hearing. Effective with respect to members designated on or after July 1, 1992, a person making a designation pursuant to G.S. 164-37 may not make another designation, except that the person's successor in elective or appointive office may make a new designation.

The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6 as applicable."

Sec. 3. Pursuant to G.S. 164-36 and G.S. 164-43, the Commission shall make a report of its recommendations, including any recommended legislation, to the 1996 Regular Session of the 1995 General Assembly and to the 1997 General Assembly.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

S.B. 408 **CHAPTER 237**

AN ACT TO ALLOW EQUITY LINE OF CREDIT AGREEMENTS TO HAVE TERMS GREATER THAN FIFTEEN YEARS AND TO ESTABLISH A PROCEDURE FOR EXTENDING EQUITY LINE OF CREDIT LOAN AGREEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-81(a)(1) reads as rewritten:

"(1) At any time within a specified period not to exceed ~~15~~ 30 years the borrower may request and the lender is obligated to provide, by honoring negotiable instruments drawn by the borrower or otherwise, advances up to an agreed aggregate limit;".

Sec. 2. Article 9 of Chapter 45 of the General Statutes is amended by adding a new section to read:

"*§ 45-82.1. Extension of period for advances.*

(a) The period for advances agreed to pursuant to G.S. 45-81(a)(1) may be extended by written agreement of the lender and borrower executed prior to termination of the equity line of credit or the borrower's obligation to

repay any outstanding indebtedness. Any extended period shall not exceed 30 years from the end of the preceding period for advances.

(b) A mortgage or deed of trust that secures an equity line of credit to which the lender and borrower have agreed to an extended period for advances shall have priority with respect to advances made after the preceding loan period from a date not later than the date of registration of the certificate described in subsection (c) of this section.

(c) The priority provided in subsection (b) of this section shall be accorded only if the grantor of the mortgage or the deed of trust securing the obligation, and other record owners of the real property therein conveyed, execute a certificate evidencing the extension and register the certificate in the office of the register of deeds where the mortgage or deed of trust is registered. The failure of any record owner to execute the certificate shall affect only that record owner's interest in the property, and executions by other owners shall have full effect to the extent of their interests in the property. For purposes of this section, the term 'record owner' means any person owning a present or future interest of record in the real property which would be affected by the lien of the mortgage or deed of trust, but does not mean the trustee in a deed of trust or the owner or holder of a mortgage, deed of trust, mechanic's or materialman's lien, or any other lien or security interest in the real property.

(d) The certificate described in subsection (c) of this section may be in any form that fulfills the requirements of subsection (c) of this section, including the following:

'Certificate of Extension of Period for Advances Under Home Equity Line of Credit

Please take notice that the borrower and lender under the home equity line of credit secured by the (deed of trust) (mortgage) recorded on _____ in Book _____, at Page _____, records of this County, have agreed to extend the period within which the borrower may request advances as set forth in G.S. 45-82.1. The borrower's obligations to repay advances and related undertakings are secured by the (deed of trust) (mortgage).

WITNESS the signatures and seals of the undersigned, this _____ day of _____, _____.

_____ (SEAL)
(Grantor (s))

_____ (SEAL)
Other record owner(s)

_____ (SEAL)
(Mortgagee or Beneficiary)

(Acknowledgment as required by law).'"

Sec. 3. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

S.B. 652 **CHAPTER 238**

AN ACT TO MAKE CHANGES TO THE GENERAL STATUTES PERTAINING TO SMALL EMPLOYER HEALTH CARE COVERAGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-50-130(b) reads as rewritten:

"(b) For all small employer health benefit plans that are subject to this ~~section and are issued on or after January 1, 1995,~~ section, premium rates for health benefit plans subject to this section are subject to the following provisions:

(1) Small employer carriers shall use an adjusted-community rating methodology in which the premium for each small employer can vary only on the basis of the eligible employee's or dependent's age as determined in accordance with subdivision (6) of this subsection, the gender of the eligible employee or dependent, number of family members covered, or geographic area as determined under subdivision (7) of this ~~subsection;~~ subsection. Premium rates charged during a rating period to small employers with similar case characteristics for same coverage shall not vary from the adjusted community rate by more than twenty percent (20%) for any reason, including differences in administrative costs and claims experience.

(2) Rating factors related to age, gender, number of family members covered, or geographic location may be developed by each carrier to reflect the carrier's experience. The factors used by carriers are subject to the Commissioner's review;

(3) Small employer carriers shall not modify the rate for a small employer for 12 months from the initial issue date or renewal date, unless the group is composite rated and composition of the group changed by twenty percent (20%) or more or benefits are ~~changed;~~ changed. The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

a. The percentage change in the adjusted community rate as measured from the first day of the prior rating period to the first day of the new rating period, and

b. Any adjustment, not to exceed fifteen percent (15%) annually, due to claim experience, health status, or duration of coverage of the employees or dependents of the small employer, and

c. Any adjustment because of change in coverage or change in case characteristics of the small employer group.

~~(4) Carriers participating in an Alliance in accordance with the Health Care Purchasing Alliance Act may apply a different community rate to business written in that Alliance;~~

~~(5) In the case of health benefit plans issued before January 1, 1995, a premium rate for a rating period, adjusted pro rata for any rating period of less than one year, may vary from the adjusted community rate, as determined by the small employer carrier and in accordance with subdivisions (1), (2), (3), and (4) of this subsection, for a period of two years after January 1, 1995, as follows:~~

~~a. On January 1, 1995, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates that could be charged to those employers under the rating system shall not vary from the adjusted community rate by more than twenty percent (20%), adjusted pro rata for any rating period of less than one year;~~

~~b. On January 1, 1996, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates that could be charged to those employers under the rating system shall not vary from the adjusted community rate by more than ten percent (10%), adjusted pro rata for any rating period of less than one year; and~~

~~c. On January 1, 1997, all small employer benefit plans that are subject to this section and are issued by small employer carriers before January 1, 1995, and that are renewed on or after January 1, 1997, renewal rates shall be based on the same adjusted community rating standard applied to new business.~~

(6) For the purposes of subsection (b) of this section, a small employer carrier ~~shall not use~~ shall, unless the employer uses composite rating, use the following age ~~brackets of less than five years;~~ brackets:

a. Younger than 15 years;
b. 15 to 19 years;
c. 20 to 24 years;
d. 25 to 29 years;
e. 30 to 34 years;
f. 35 to 39 years;
g. 40 to 44 years;
h. 45 to 49 years;
i. 50 to 54 years;
j. 55 to 59 years;
k. 60 to 64 years;
l. 65 years.

Carriers may combine, but shall not split, complete age brackets for the purposes of determining rates under subsection (b) of this section. Small employer carriers shall be permitted to develop separate rates for individuals aged 65 years and older for coverage for which Medicare is the primary payor and coverage for which Medicare is not the primary payor.

(7) For the purposes of subsection (b) of this section, a carrier shall not apply different geographic rating factors to the rates of small employers located within the same county; and

(8) The Department may adopt rules to administer this subsection and to assure that rating practices used by small employer carriers are consistent with the purposes of this subsection. Those rules shall include consideration of differences based on the following:

a. Health benefit plans that use different provider network arrangements may be considered separate plans for the purposes of determining the rating in subdivision (1) of this subsection, provided that the different arrangements are expected to result in substantial differences in claims costs;

b. Except as provided for in sub-subdivision a. of this subdivision, differences in ~~premium~~ rates charged for different health benefit plans shall be reasonable and reflect objective differences in plan design, but shall not permit differences in premium rates because of the ~~demographics~~ case characteristics of groups assumed to select particular health benefit plans; and

c. Small employer carriers shall apply allowable rating factors consistently with respect to all small employers. ~~Adjustments in rates for age, gender, and geography shall not be applied individually. Any such adjustment shall be applied uniformly to the rate charged for all employee enrollees of the small employer.~~"

Sec. 2. G.S. 143-622(21) reads as rewritten:

"(21) 'Qualified health care plans' means the basic or standard health care plans offered by an Accountable Health Carrier to member small employers and as authorized by the Small Employer Carrier Committee pursuant to G.S. ~~58-50-120.~~ 58-50-120 and one additional plan. This additional plan shall be strictly limited to medical benefits and shall not be instituted with any elements of dental benefits. For the purposes of this section, 'medical' does not include any elements of life, property and casualty, or workers' compensation benefits."

Sec. 3. G.S. 143-626(2) reads as rewritten:

"(2) Accept applications by carriers to qualify as Accountable Health Carriers, determine the eligibility of carriers to become Accountable Health Carriers according to criteria described in G.S. 143-629, ~~and~~ designate carriers as Accountable Health ~~Carriers.~~ Carriers, and approve one additional qualified health care plan to be offered to small employers beyond the basic and standard health care plans."

Sec. 4. G.S. 143-632(d) reads as rewritten:

"(d) ~~Nothing in this section shall be construed to or explicitly prohibit an Alliance or Accountable Health Carrier from using the services of an agent or broker in order to assist in marketing.~~ The Board shall require the use of agents or brokers licensed by the North Carolina Department of Insurance to assist small employers in obtaining coverage through an Alliance. All

licensed agents or brokers shall be eligible to market and sell coverage through an Alliance. An Accountable Health Carrier shall not vary compensation or commissions to such agents or brokers based, directly or indirectly, on the anticipated or actual claims experience or health status associated with particular small employers to which each plan is sold."

Sec. 5. The Small Group Carrier Committee, the Department of Insurance, and the State Health Plan Purchasing Alliance Board shall report no later than January 1, 1997, to the Joint Legislative Commission on Governmental Operations on the following:

(1) The market impact study of adjusted community rating on the small group markets in other states, especially in Florida, California, Kentucky, South Carolina, and Maryland;

(2) A market impact study to evaluate the short-term and long-term effect of adjusted community rating on the small group market in North Carolina; and

(3) If deemed necessary, a proposed timeline for a transition toward adjusted community rating without experience and administrative expense bands.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

S.B. 975 **CHAPTER 239**

AN ACT TO AUTHORIZE THE DEPOSIT OF TOBACCO ASSESSMENT FUNDS WITH THE NORTH CAROLINA TOBACCO FOUNDATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-568.8(b) reads as rewritten:

"(b) Tobacco Poundage Assessments. In the event two-thirds or more of the eligible farmers and producers participating in the tobacco referendum vote in favor of the tobacco poundage assessment authorized under this Article, then said assessment shall be collected for a period of six years under rules, regulations, and methods adopted by the North Carolina Tobacco Research Commission. The North Carolina Tobacco Research Commission is exempt from the provisions of Chapter 150B of the General Statutes.

The assessments collected shall be remitted to the Department of Agriculture to be expended under the direction of the Tobacco Research Commission for research and dissemination of research facts concerning tobacco. Any person that receives assessment funds from the Tobacco Research Commission shall file quarterly written reports with the Tobacco Research Commission on the receipt and expenditure of assessment funds. The Tobacco Research Commission may transfer assessments to the North Carolina Tobacco Foundation, Inc., to be held and invested by the Tobacco Foundation until such time as the Commission shall direct their expenditure for the purposes set forth in this section."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

H.B. 272 **CHAPTER 240**

AN ACT TO ALLOW PARTIAL DISTRIBUTION AWARDS PRIOR TO FINAL JUDGMENT IN EQUITABLE DISTRIBUTION CASES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-20(i1) reads as rewritten:

"(i1) ~~After an action for equitable distribution has been filed the Court may, for just cause, order the spouse in control of marital assets to transfer the use and possession of some or all of those assets to the other spouse provided that any and all assets so transferred shall be subject to a full accounting when the property is ultimately allocated in an equitable distribution judgment. Any property transfer made pursuant to this subsection shall be made without prejudice to the rights of either spouse to claim a contrary classification, value, or distribution in the final equitable distribution trial.~~ For good cause shown, including, but not limited to, providing for the subsistence of a spouse while an action is pending, the Court may, at any time after an action for equitable distribution has been filed and prior to the final judgment of equitable distribution, enter orders declaring what is separate property and dividing part of the marital property between the parties. The partial distribution may provide for a distributive award. Any such orders entered shall be taken into consideration at trial and proper credit given.

Hearings held pursuant to this subsection may be held at sessions arranged by the chief district court judge pursuant to G.S. 7A-146 and, if held at such sessions, shall not be subject to the reporting requirements of G.S. 7A-198."

Sec. 2. This act becomes effective October 1, 1995, and applies to all equitable distribution actions pending on or filed after that date.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

H.B. 766 **CHAPTER 241**

AN ACT TO CLARIFY AND MAKE UNIFORM THE LAWS REGARDING THE SALE AND DISTRIBUTION OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OLD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-313 reads as rewritten:

"§ *14-313. ~~Selling cigarettes to minors.~~ Youth access to tobacco products.*

(a) Definitions. -- The following definitions apply in this section:

(1) Distribute. -- To sell, furnish, give, or provide tobacco products, including tobacco product samples, or cigarette wrapping papers to the ultimate consumer.

(2) Proof of age. -- A drivers license or other documentary or written evidence that purports to establish that the person is 18 years of age or older.

(3) Sample. -- A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.

(4) Tobacco product. -- Any product that contains tobacco and is intended for human consumption.

(b) Sale or distribution to persons under the age of 18 years. -- If any person shall knowingly ~~sell, give away or otherwise dispose of, directly or indirectly, cigarettes, or tobacco in the form of cigarettes, or cut tobacco in any form or shape which may be used or intended to be used as a substitute for cigarettes,~~ distribute, or knowingly aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers ~~papers, or a smokeless tobacco product~~ to any ~~minor~~ person under the age of 18 years, or if any person shall knowingly ~~aid, assist or abet any other person in selling such articles~~ purchase tobacco products or cigarette wrapping papers on behalf of ~~such minor,~~ a person, less than 18 years, ~~he~~ the person shall be guilty of a Class 2 ~~misdemeanor.~~ misdemeanor; ~~As used in this section, "smokeless tobacco product" means (i) loose tobacco or a flat compressed cake of tobacco that may be chewed or held in the mouth or (ii) shredded, powdered, or pulverized tobacco that may be inhaled through the nostrils, chewed, or held in the mouth or (ii) shreded, powdered, or pulverized tobacco that may be inhaled through the nostrils, chewed, or held in the mouth;~~ provided, however, that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties.

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought under this subsection.

(c) Purchase by persons under the age of 18 years. -- If any person under the age of 18 years purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product, the person shall be guilty of an infraction as provided in G.S. 14-3.1.

(d) Send or assist person less than 18 years to purchase or receive tobacco product. -- If any person shall knowingly send or assist a person less than 18 years to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under the age of 18 may be enlisted by police or local sheriffs' departments to test compliance if the testing is under the direct supervision of that law enforcement department and written parental consent is provided; provided further, that the Department of Human Resources shall have the

authority, pursuant to a written plan prepared by the Secretary of Human Resources, to use persons under 18 years of age in annual, random, unannounced inspections, provided that prior written parental consent is given for the involvement of these persons and that the inspections are conducted for the sole purpose of preparing a scientifically and methodologically valid statistical study of the extent of success the State has achieved in reducing the availability of tobacco products to persons under the age of 18, and preparing any report to the extent required by section 1926 of the federal Public Health Service Act (42 USC § 300x-26).

(e) Statewide uniformity. -- It is the intent of the General Assembly to prescribe this uniform system for the regulation of tobacco products to ensure the eligibility for and receipt of any federal funds or grants that the State now receives or may receive relating to the provisions of G.S. 14-313. To ensure uniformity, no political subdivisions, boards, or agencies of the State nor any county, city, municipality, municipal corporation, town, township, village, nor any department or agency thereof, may enact ordinances, rules or regulations concerning the sale, distribution, display or promotion of tobacco products or cigarette wrapping papers on or after September 1, 1995. This subsection does not apply to the regulation of vending machines, nor does it prohibit the Secretary of Revenue from adopting rules with respect to the administration of the tobacco products taxes levied under Article 2A of Chapter 105 of the General Statutes."

Sec. 2. This act becomes effective December 1, 1995, and applies to offenses committed on or after that date. Subsection (e) of G.S. 14-313 as enacted by this act does not affect local ordinances adopted before September 1, 1995.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

S.B. 612 **CHAPTER 242**

AN ACT TO REQUIRE THE BUILDING CODE COUNCIL TO ADOPT ALTERNATIVE SAFETY SYSTEMS FOR BUILDINGS BUILT PRIOR TO 1953.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-138(j) reads as rewritten:

"(j) Subsection (i) of this section does not apply to business occupancy buildings as defined in the North Carolina State Building Code except that evacuation plans as required on page 8, lines 2 through 16 [Section 1008, footnote following subsection (h)], and smoke detectors as required for Class I Buildings as required by Section 1008.2, page 11, lines 5 through 21 [Section 1008.2, subdivision (c)(1)]; Class II Buildings as required by Section 1008.3, page 17, lines 17 through 28 and page 18, lines 1 through 10 [Section 1008.3, subsections (c) and(d)]; and Class III Buildings, as required by Section 1008.4, lines 21 through 25 [Section 1008.4, subsection (c)] shall not be exempted from operation of this act as applied to business occupancy ~~buildings.~~ buildings, except that the Council shall adopt rules that allow a business occupancy building built prior to 1953 to have a single exit

to remain if the building complies with the Building Code on or before December 31, 2006."

Sec. 2. The Building Code Council shall adopt rules or amend the Building Code consistent with Section 1 of this act on or before October 1, 1995.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of June, 1995.

S.B. 813 **CHAPTER 243**

AN ACT TO CHANGE THE NAME OF THE CHIEF OF THE COUNTY ELECTION STAFF FROM "SUPERVISOR OF ELECTIONS" TO "DIRECTOR OF ELECTIONS."

The General Assembly of North Carolina enacts:

Section 1. Wherever the term "supervisor" appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163-35, the term is changed to read "director."

Sec. 2. This act becomes effective January 1, 1996.

In the General Assembly read three times and ratified this the 14th day of June, 1995.

H.B. 269 **CHAPTER 244**

AN ACT TO AUTHORIZE DISTRICT COURT JUDGES TO SANCTION PARTIES TO EQUITABLE DISTRIBUTION PROCEEDINGS FOR PURPOSEFUL, PREJUDICIAL DELAY OF THE PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-21 reads as rewritten:

"*§ 50-21. Procedures in actions for equitable distribution of ~~property.~~ property; sanctions for purposeful and prejudicial delay.*

(a) At any time after a husband and wife begin to live separate and apart from each other, a claim for equitable distribution may be filed, either as a separate civil action, or together with any other action brought pursuant to Chapter 50 of the General Statutes, or as a motion in the cause as provided by G.S. 50-11(e) or (f). Within 90 days after service of a claim for equitable distribution, the party who first asserts the claim shall prepare and serve upon the opposing party an equitable distribution inventory affidavit listing all property claimed by the party to be marital property and all property claimed by the party to be separate property, and the estimated date-of-separation fair market value of each item of marital and separate property. Within 30 days after service of the inventory affidavit, the party upon whom service is made shall prepare and serve an inventory affidavit upon the other party. The inventory affidavits prepared and served pursuant to this subsection shall be subject to amendment and shall not be binding at trial as to completeness or value. The court may extend the time limits in

this subsection for good cause shown. The affidavits are subject to the requirements of G.S. 1A-1, Rule 11, and are deemed to be in the nature of answers to interrogatories propounded to the parties. Any party failing to supply the information required by this subsection in the affidavit is subject to G.S. 1A-1, Rules 26, 33, and 37. During the pendency of the action for equitable distribution, discovery may proceed, and the court ~~may~~ shall enter temporary orders as appropriate and necessary for the purpose of preventing the disappearance, waste, or destruction of marital or separate property or to secure the possession thereof.

A judgment for an equitable distribution shall not be entered prior to entry of a decree of absolute divorce, except for a consent judgment, which may be entered at any time during the pendency of the action, or except if the parties have been separated for at least six months and they consent, in a pleading or other writing filed with the court, to an equitable distribution trial prior to the entry of the decree for absolute divorce.

Real or personal property located outside of North Carolina is subject to equitable distribution in accordance with the provisions of G.S. 50-20, and the court may include in its order appropriate provisions to ensure compliance with the order of equitable distribution.

(b) For purposes of equitable distribution, marital property shall be valued as of the date of the separation of the parties.

(c) Nothing in G.S. 50-20 or this section shall restrict or extend the right to trial by jury as provided by the Constitution of North Carolina.

(d) Within 120 days after the filing of the initial pleading or motion in the cause for equitable distribution, the party first serving the pleading or application shall apply to the court to conduct a scheduling and discovery conference. If that party fails to make application, then the other party may do so. At the conference the court shall determine a schedule of discovery as well as consider and rule upon any motions for appointment of expert witnesses, or other applications, including applications to determine the date of separation, and shall set a date for the disclosure of expert witnesses and a date on or before which an initial pretrial conference shall be held.

At the initial pretrial conference the court shall make inquiry as to the status of the case and shall enter a date for the completion of discovery, the completion of a mediated settlement conference, if applicable, and the filing and service of motions, and shall determine a date on or after which a final pretrial conference shall be held and a date on or after which the case shall proceed to trial.

The final pretrial conference shall be conducted pursuant to the Rules of Civil Procedure and the General Rules of Practice in the applicable district or superior court, adopted pursuant to G.S. 7A-34. The court shall rule upon any matters reasonably necessary to effect a fair and prompt disposition of the case in the interests of justice.

(e) Upon motion of either party or upon the court's own initiative, the court shall impose an appropriate sanction on a party when the court finds that:

(1) The party has willfully obstructed or unreasonably delayed, or has attempted to obstruct or unreasonably delay, discovery proceedings, including failure to make discovery pursuant to G.S.

N.C. Collection / UNC-CH Library

1A-1, Rule 37, or has willfully obstructed or unreasonably delayed or attempted to obstruct or unreasonably delay any pending equitable distribution proceeding, and

(2) The willful obstruction or unreasonable delay of the proceedings is or would be prejudicial to the interests of the opposing party.

Delay consented to by the parties is not grounds for sanctions. The sanction may include an order to pay the other party the amount of the reasonable expenses and damages incurred because of the willful obstruction or unreasonable delay, including a reasonable attorneys' fee, and including appointment by the court, at the offending party's expense, of an accountant, appraiser, or other expert whose services the court finds are necessary to secure in order for the discovery or other equitable distribution proceeding to be timely conducted."

Sec. 2. This act becomes effective October 1, 1995, and applies to claims for equitable distribution filed on or after that date and to pending litigation as to G.S. 50-21(e) only.

In the General Assembly read three times and ratified this the 14th day of June, 1995.

H.B. 273 **CHAPTER 245**

AN ACT TO ALLOW CLAIMS FOR EQUITABLE DISTRIBUTION TO BE RESOLVED EITHER BEFORE OR AFTER AN ABSOLUTE DIVORCE IS GRANTED AND TO CLARIFY THE LAW CONCERNING THE INTEREST IN MARITAL PROPERTY OF A SUBSEQUENT SPOUSE PRIOR TO EQUITABLE DISTRIBUTION OF MARITAL PROPERTY OF FORMER MARRIAGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-21(a) reads as rewritten:

"(a) At any time after a husband and wife begin to live separate and apart from each other, a claim for equitable distribution may be filed, either as a separate civil action, or together with any other action brought pursuant to Chapter 50 of the General Statutes, or as a motion in the cause as provided by G.S. 50-11(e) or (f). Within 90 days after service of a claim for equitable distribution, the party who first asserts the claim shall prepare and serve upon the opposing party an equitable distribution inventory affidavit listing all property claimed by the party to be marital property and all property claimed by the party to be separate property, and the estimated date-of-separation fair market value of each item of marital and separate property. Within 30 days after service of the inventory affidavit, the party upon whom service is made shall prepare and serve an inventory affidavit upon the other party. The inventory affidavits prepared and served pursuant to this subsection shall be subject to amendment and shall not be binding at trial as to completeness or value. The court may extend the time limits in this subsection for good cause shown. During the pendency of the action for equitable distribution, discovery may proceed, and the court may enter temporary orders as appropriate and necessary for the purpose of preventing

the disappearance, waste, or destruction of marital or separate property or to secure the possession thereof.

~~A judgment for equitable distribution shall not be entered prior to entry of a decree of absolute divorce, except for a consent judgment, which may be entered at any time during the pendency of the action, or except if the parties have been separated for at least six months and they consent, in a pleading or other writing filed with the court, to an equitable distribution trial prior to the entry of the decree for absolute divorce.~~

Real or personal property located outside of North Carolina is subject to equitable distribution in accordance with the provisions of G.S. 50-20, and the court may include in its order appropriate provisions to ensure compliance with the order of equitable distribution."

Sec. 2. G.S. 50-20 is amended by adding a new subsection to read:

"(c1) Notwithstanding any other provision of law, a second or subsequent spouse acquires no interest in the marital property of his or her spouse from a former marriage until a final determination of equitable distribution is made in the marital property of the spouse's former marriage."

Sec. 3. This act becomes effective October 1, 1995, and applies to actions filed on or after that date.

In the General Assembly read three times and ratified this the 14th day of June, 1995.

S.B. 127 **CHAPTER 246**

AN ACT TO IMPOSE CRIMINAL PENALTIES FOR THE ABUSE, NEGLECT, OR EXPLOITATION OF DISABLED OR ELDER ADULTS LIVING IN A DOMESTIC SETTING.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 14 of the General Statutes is amended by adding a new section:

"*§ 14-32.3. Domestic abuse, neglect, and exploitation of disabled or elder adults.*

(a) Abuse. -- A person is guilty of abuse if that person is a caretaker of a disabled or elder adult who is residing in a domestic setting and, with malice aforethought, knowingly and willfully: (i) assaults, (ii) fails to provide medical or hygienic care, or (iii) confines or restrains the disabled or elder adult in a place or under a condition that is cruel or unsafe, and as a result of the act or failure to act the disabled or elder adult suffers mental or physical injury.

If the disabled or elder adult suffers serious injury from the abuse, the caretaker is guilty of a Class F felony. If the disabled or elder adult suffers injury from the abuse, the caretaker is guilty of a Class H felony.

A person is not guilty of an offense under this subsection if the act or failure to act is in accordance with G.S. 90-321 or G.S. 90-322.

(b) Neglect. -- A person is guilty of neglect if that person is a caretaker of a disabled or elder adult who is residing in a domestic setting and, wantonly, recklessly, or with gross carelessness: (i) fails to provide medical or hygienic care, or (ii) confines or restrains the disabled or elder adult in a

place or under a condition that is unsafe, and as a result of the act or failure to act the disabled or elder adult suffers mental or physical injury.

If the disabled or elder adult suffers serious injury from the neglect, the caretaker is guilty of a Class G felony. If the disabled or elder adult suffers injury from the neglect, the caretaker is guilty of a Class I felony.

A person is not guilty of an offense under this subsection if the act or failure to act is in accordance with G.S. 90-321 or G.S. 90-322.

(c) Exploitation. -- A person is guilty of exploitation if that person is a caretaker of a disabled or elder adult who is residing in a domestic setting, and knowingly, willfully and with the intent to permanently deprive the owner of property or money: (i) makes a false representation, (ii) abuses a position of trust or fiduciary duty, or (iii) coerces, commands, or threatens, and, as a result of the act, the disabled or elder adult gives or loses possession and control of property or money.

If the loss of property or money is of a value of more than one thousand dollars ($1,000) the caretaker is guilty of a Class H felony. If the loss of property or money is of a value of less than one thousand dollars ($1,000) the caretaker is guilty of a Class 1 misdemeanor.

(d) Definitions. -- The following definitions apply in this section:

(1) Caretaker. -- A person who has the responsibility for the care of a disabled or elder adult as a result of family relationship or who has assumed the responsibility for the care of a disabled or elder adult voluntarily or by contract.

(2) Disabled adult. -- A person 18 years of age or older or a lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated as defined in G.S. 108A-101(d).

(3) Domestic setting. -- Residence in any residential setting except for a health care facility or residential care facility as these terms are defined in G.S. 14-32.2.

(4) Elder adult. -- A person 60 years of age or older who is not able to provide for the social, medical, psychiatric, psychological, financial, or legal services necessary to safeguard the person's rights and resources and to maintain the person's physical and mental well-being."

Sec. 2. This act becomes effective December 1, 1995, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 14th day of June, 1995.

S.B. 240 **CHAPTER 247**

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO PERFORM DREDGING SERVICES FOR UNITS OF LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-18 is amended by adding a new subdivision to read:

"(32) The Department of Transportation may perform dredging services, on a cost reimbursement basis, for a unit of local government if the unit cannot obtain the services from a private company at a reasonable cost. A unit of local government is considered to be unable to obtain dredging services at a reasonable cost if it solicits bids for the dredging services in accordance with Article 8 of Chapter 143 of the General Statutes and does not receive a bid, considered by the Department of Transportation Engineering Staff, to be reasonable."

Sec. 2. G.S. 66-58(c) is amended by adding a new subdivision to read:

"(16) The performance by the Department of Transportation of dredging services for a unit of local government."

Sec. 3. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 14th day of June, 1995.

S.B. 399 **CHAPTER 248**

AN ACT TO AMEND THE DEFINITION OF PODIATRY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-202.2 reads as rewritten:

"*§ 90-202.2. 'Podiatry' defined.*

~~Podiatry as defined by this Article is the surgical or medical or mechanical treatment of all ailments of the human foot, except the amputation of the foot or toes or the administration of an anesthetic other than local and except the correction of clubfoot deformity and triple arthrodesis.~~

(a) Podiatry as defined by this Article is the surgical, medical, or mechanical treatment of all ailments of the human foot and ankle, and their related soft tissue structures to the level of the myotendinous junction. Excluded from the definition of podiatry is the amputation of the entire foot, the administration of an anesthetic other than local, and the surgical correction of clubfoot of an infant two years of age or less.

(b) Except for procedures for bone spurs and simple soft tissue procedures, any surgery on the ankle or on the soft tissue structures related to the ankle, any amputations, and any surgical correction of clubfoot shall be performed by a podiatrist only in a hospital licensed under Article 5 of Chapter 131E of the General Statutes or in a multispecialty ambulatory surgical facility that is not a licensed office setting, and that is licensed under Part D of Article 6 of Chapter 131E of the General Statutes. Before performing any of the surgeries referred to in this subsection in a multispecialty ambulatory surgical facility, the podiatrist shall have applied for and been granted privileges to perform this surgery in the multispecialty ambulatory surgical facility. The granting of these privileges shall be based upon the same criteria for granting hospital privileges under G.S. 131E-85.

(c) The North Carolina Board of Podiatry Examiners shall maintain a list of podiatrists qualified to perform the surgeries listed in subsection (b) of this section, along with specific information on the surgical training successfully completed by each licensee."

Sec. 2. A committee composed of two members of the North Carolina Board of Podiatry Examiners and two members of the North Carolina Board of Medical Examiners shall jointly define by rule what constitutes "simple soft tissue procedures" as that phrase is used in G.S. 90-202.2(b) in order to promote the public health, safety, and welfare. These members shall be selected by their respective Boards, shall begin deliberations on or before August 1, 1995, and shall complete their deliberations on or before October 1, 1995. The decision of this committee shall be binding on both Boards unless changed by mutual agreement of both Boards. The committee shall terminate October 1, 1995. Rules adopted under this section are exempt from Article 2A of Chapter 150B of the General Statutes.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of June, 1995.

S.B. 775 **CHAPTER 249**

AN ACT TO DEFINE CLIENTS ELIGIBLE FOR WILLIE M. SERVICES, TO AUTHORIZE THE ADOPTION OF RULES TO DETERMINE ELIGIBILITY, TO ENSURE THE PROVISION OF SERVICES, AND TO PROVIDE FOR CONTESTED CASE HEARING PROVISION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-3 is amended by redesignating existing subdivision (13a) as subdivision (13a1) and by inserting before it a new subdivision (13a) to read:

"(13a) 'Eligible assaultive and violent children' means children who are citizens of North Carolina and:

a. Who suffer from emotional, mental, or neurological handicaps that have been accompanied by behavior that is characterized as violent or assaultive; and

b. Who are involuntarily institutionalized or otherwise placed in residential programs, including:

1. Minors who are mentally ill as defined by G.S. 122C-3(21) and who are admitted for evaluation or treatment to a treatment facility under Article 5 of Chapter 122C of the General Statutes or are presented for admission and denied due to their behaviors or handicapping conditions;

2. Minors who are referred to an area mental health, developmental disabilities, and substance abuse authority pursuant to G.S. 7A-647(3) for whom residential treatment or placement is recommended;

3. Minors who are placed in residential programs as a condition of probation pursuant to G.S. 7A-649(8);
4. Minors who are ordered to a professional residential treatment program pursuant to G.S. 7A-649(6); and
5. Minors committed to the custody of the Division of Youth Services pursuant to G.S. 7A-649(10); and

c. For whom the State has not provided appropriate treatment and educational programs."

Sec. 2. G.S. 122C-112(a) is amended by adding a new subdivision to read:

"(14) Adopt rules to be followed in the determination of eligibility for, and to ensure the provision of services for, eligible assaultive and violent children as defined in G.S. 122C-3(13a)."

Sec. 3. Article 4 of Chapter 122C of the General Statutes is amended by adding a new Part to read:

"Part 7. Contested Case Hearings for Eligible Assaultive and Violent Children.

"*§ 122C-194. Declaration of policy.*

It is the State's policy to provide procedures for the contested case hearing for an eligible assaultive and violent child, as defined in G.S. 122C-3(13a) and to his or her parent, advocate, or legal guardian. Such procedures shall also be available to any child who has been determined ineligible for services for eligible assaultive and violent children and to his or her parent, advocate, or legal guardian for purposes of appealing the denial of eligibility.

"*§ 122C-195. Scope and effect.*

(a) The parent, guardian, or advocate may obtain review of proposed decisions on the following grounds:

(1) The child has not been identified and evaluated or has been incorrectly identified and evaluated;
(2) The child's Individual Habilitation Plan (I.H.P.), services, or placement are not appropriate to meet the child's needs;
(3) The plan is not being implemented;
(4) The services provided are other than those specified in the service plan, are not provided with sufficient intensity or continuity to meet the child's needs, or have not been initiated or provided in a timely, regular, or competent manner; or
(5) The child's needs and capabilities have not been timely, thoroughly, or accurately assessed.

(b) A local or State agency may obtain review as provided by this section if a parent, guardian, or advocate refuses to consent to the evaluation of the child.

(c) Except as otherwise provided in this section, the administrative review shall be initiated and conducted in accordance with Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act. The hearing shall be closed to the public unless the parent, guardian, or advocate requests in writing that the hearing be open to the public.

"*§ 122C-196. Prior notice.*

(a) Written notice shall be given to the parent, guardian, or advocate of an eligible assaultive and violent child, within a reasonable time before the local or State agency:

(1) Proposes to initiate or change the identification/eligibility, evaluation/assessment, I.H.P., treatment provisions, services, or placement of the child; or

(2) Refuses to initiate or change the identification/eligibility, evaluation/assessment, I.H.P., treatment provisions, services, or placement requested by the parent, guardian, or advocate on behalf of a child.

(b) The specific form and content of the notice shall be governed by rules adopted by the Secretary but shall include:

(1) A full explanation of all procedural safeguards including the right to mediation, impartial contested case hearing rights (administrative review), the opportunity to examine records, an independent evaluation, confidentiality, and the right to be represented by counsel;

(2) A description of the action proposed or refused by the local or State agency, an explanation of why the agency proposed or refused to take the action, and a description of any options the agency considered and the reasons why those options were rejected; and

(3) A description of each evaluation procedure, test, record, or report the local or State agency uses as a basis for the proposal, refusal, or denial.

(c) The local or State agency shall document that the notice has been sent to and received by the parent, guardian, or advocate.

"*§ 122C-197. Mediation.*

(a) Prior to the filing of a petition for contested case review, mediation of disputes is voluntary but encouraged.

(b) When such a request for mediation has been made by the parent, guardian, or advocate, the director of the area authority or the director of the designated lead agency shall meet, or designate an assistant or associate to meet, with the parent, guardian, or advocate, the local interagency committee, and the regional consultant/service manager for the Department of Public Instruction and the Department of Human Resources to mediate the dispute.

(c) The meeting shall be informal and nonadversarial, as required by G.S. 150B-22.

(d) Mediation of the disagreement shall occur within 10 working days of the initiation of the mediation process by the parent, guardian, or advocate. If successful mediation does not occur within 10 working days, the parent, guardian, or advocate may file a written petition with the Office of Administrative Hearings for a contested case hearing in accordance with G.S. 150B-23.

"*§ 122C-198. Decision of the administrative law judge.*

Following the contested case hearing, the administrative law judge shall make a decision regarding the issues set forth in G.S. 122C-195(a). The decision shall contain findings of fact and conclusions of law.

Notwithstanding the provisions of Chapter 150B of the General Statutes, the decision of the administrative law judge becomes final and not subject to further review unless appealed to the Review Officer as provided in G.S. 122C-199. A copy of the administrative law judge's decision shall be served upon each party, and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the availability of appeal and the 30-day limitations period for appeal, as set forth in Chapter 150B of the General Statutes.

"*§ 122C-199. Administrative review by Review Officer.*

(a) When there is an appeal by either party of the decision of the administrative law judge, an impartial Review Officer for the review will be appointed by the Secretary of the Department of Human Resources.

(b) The Review Officer shall be selected from a pool of review officers who have been approved, meet qualifications, and perform a review pursuant to rules adopted by the Secretary for this purpose.

(c) If the Review Officer decides to hold a hearing to receive additional evidence, all rights prescribed by Chapter 150B of the General Statutes to an administrative hearing apply.

(d) The decision of the Review Officer shall contain findings of fact and conclusions of law and becomes final unless an aggrieved party brings a civil action pursuant to Article 4 of Chapter 150B of the General Statutes. A copy of the decision shall be served upon each party, and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the right to file a civil action and the 30-day limitations period for filing a civil action pursuant to Article 4 of Chapter 150B of the General Statutes.

(e) Any party aggrieved by the decision of the Review Officer may file a petition for judicial review under Chapter 150B of the General Statutes in State court within 30 days after receipt of notice of the decision.

"*§ 122C-200. Enforcing decision.*

The Secretary shall implement the final decision of the administrative law judge, if not appealed pursuant to G.S. 122C-199 or the final decision of the review, by ordering the local or State agency:

(1) To make a child eligible for class membership; and/or

(2) To provide a child with appropriate services."

Sec. 4. G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(11) Hearings that are provided by the Department of Human Resources regarding the eligibility and provision of services for eligible assaultive and violent children, as defined in G.S. 122C-3(13a), shall be conducted pursuant to the provisions outlined in G.S. 122C, Article 4, Part 7."

Sec. 5. Rules adopted for Willie M. class members prior to the effective date of this act remain in effect until amended or repealed by rules adopted for eligible assaultive and violent children, as defined in this act.

Sec. 6. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 14th day of June, 1995.

S.B. 1003 CHAPTER 250

AN ACT TO EXEMPT INDIVIDUAL RETIREMENT ACCOUNTS, INDIVIDUAL RETIREMENT ANNUITIES, AND SIMPLIFIED EMPLOYEES PENSION/INDIVIDUAL RETIREMENT ACCOUNTS FROM THE CLAIMS OF CREDITORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1C-1601(a) reads as rewritten:

"(a) Exempt property. -- Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of his creditors:

(1) The debtor's aggregate interest, not to exceed ten thousand dollars ($10,000) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's aggregate interest in any property, not to exceed three thousand five hundred dollars ($3,500) in value less any amount of the exemption used under subdivision (1).

(3) The debtor's interest, not to exceed one thousand five hundred dollars ($1,500) in value, in one motor vehicle.

(4) The debtor's aggregate interest, not to exceed three thousand five hundred dollars ($3,500) in value for the debtor plus seven hundred fifty dollars ($750.00) for each dependent of the debtor, not to exceed three thousand dollars ($3,000) total for dependents, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed, seven hundred fifty dollars ($750.00) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(6) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.

(7) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(8) Compensation for personal injury or compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.

(9) Individual retirement accounts as described in Section 408(a) of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of the Internal Revenue Code. For purposes of this subdivision,

'Internal Revenue Code' means Code as defined in G.S. 105-228.90."

Sec. 2. This act is effective October 1, 1995, and applies to judgments entered on or after that date.

In the General Assembly read three times and ratified this the 14th day of June, 1995.

H.B. 208 **CHAPTER 251**

AN ACT TO ALLOW ALLEGHANY, CURRITUCK, EDGECOMBE, GREENE, HALIFAX, JACKSON, MADISON, MOORE, RANDOLPH, SCOTLAND, UNION, AND WAKE COUNTIES TO ACQUIRE PROPERTY FOR USE BY THEIR COUNTY BOARDS OF EDUCATION AND TO CLARIFY THAT BOARDS OF EDUCATION HAVE THE SAME DEGREE OF CONSTRUCTION OVERSIGHT WHEN A COUNTY OWNS THE PROPERTY UPON WHICH THE SCHOOL BUILDINGS ARE BUILT AS WHEN THE LOCAL BOARDS OWN THE PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158.1(e), as amended by Chapter 17 of the 1995 Session Laws, reads as rewritten:

"(e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Chowan, Columbus, Currituck, Duplin, Edgecombe, Forsyth, Franklin, Greene, Halifax, Harnett, Haywood, Iredell, Jackson, Johnston, Lee, Macon, Madison, Moore, Nash, Orange, Pasquotank, Pender, Randolph, Richmond, Rowan, Sampson, Scotland, Stanly, Union, Wake, and Watauga Counties."

Sec. 2. G.S. 153A-158.1(b), as amended by Chapter 17 of the 1995 Session Laws, reads as rewritten:

"(b) Construction or Improvement by County. -- A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. The local board of education shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the property to the same extent as if the local board owned the property."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

S.B. 268 **CHAPTER 252**

AN ACT TO PROVIDE THAT FEES PAID BY BORROWERS TO LOSS RESERVE ACCOUNTS OF STATE-FUNDED ECONOMIC DEVELOPMENT PROGRAMS ARE NOT CONSIDERED INTEREST OR SUBJECT TO CLAIMS OR DEFENSES OF USURY.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 24 of the General Statutes is amended by adding a new section to read:

"*§ 24-9.3. Economic development loans.*

Fees or other funds paid by borrowers for contribution to loss reserve accounts administered and controlled by nonprofit corporations that are part of State-funded programs that provide loans to promote economic development shall not be considered interest under this Chapter and shall not be subject to claims or defenses of usury."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

S.B. 318 **CHAPTER 253**

AN ACT TO CHANGE THE TIME REQUIREMENT FOR THE UPDATING OF THE PLAN FOR SERVING OLDER ADULTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-181.1A(a) reads as rewritten:

"(a) The Division of Aging, Department of Human Resources shall submit a regularly updated plan to the General Assembly by March 1 of every other odd-numbered ~~year. Beginning March 1, 1991, a summary plan for serving older adults shall be submitted but the full plan only for 1991 shall be submitted to the General Assembly by July 1, 1991.~~ year, beginning March 1, 1995. This plan shall include:

(1) A detailed analysis of the needs of older adults in North Carolina, based on existing available data, including demographic, geographic, health, social, economical, and other pertinent indicators;

(2) A clear statement of the goals of the State's long-term public policy on aging;

(3) An analysis of services currently provided and an analysis of additional services needed; and

(4) Specific implementation recommendations on expansion and funding of current and additional services and services levels."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

S.B. 334 **CHAPTER 254**

AN ACT TO MAKE CLARIFYING CHANGES TO THE LONG-TERM CARE OMBUDSMAN PROGRAM LAW, THE NURSING HOME COMMUNITY ADVISORY COMMITTEE LAW, AND THE DOMICILIARY HOME COMMUNITY ADVISORY COMMITTEE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-181.15 reads as rewritten:

"§ 143B-181.15. Long-Term Care Ombudsman Program/Office; policy.

The General Assembly finds that a significant number of older citizens of this State reside in long-term care facilities and are dependent on others to provide their care. It is the intent of the General Assembly to protect and improve the quality of care and life for residents through the establishment of a program to assist residents and providers in the resolution of complaints or common concerns, to promote community involvement and volunteerism in long-term care facilities, and to educate the public about the long-term care system. It is the further intent of the General Assembly that the Department of Human Resources, within available resources and pursuant to its duties under the Older Americans Act of 1965, as amended, ~~42 U.S.C. § 3001-3057g,~~ 42 U.S.C. § 3001 et seq., ensure that the quality of care and life for these residents is maintained, that necessary reports are made, and that, when necessary, corrective action is taken at the Department level."

Sec. 2. G.S. 143B-181.16 reads as rewritten:

"§ 143B-181.16. Long-Term Care Ombudsman Program/Office; definition.

Unless the content clearly requires otherwise, as used in this Article:

(1) 'Long-term care facility' means any skilled nursing facility and intermediate care facility as defined in ~~G.S. 131A-(4)~~ G.S. 131A-3(4) or any domiciliary home as defined in G.S. 131D-20(2).

(2) 'Resident' means any person who is receiving treatment or care in any long-term care facility.

(3) 'State Ombudsman' means the State Ombudsman as defined by the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., who carries out the duties and functions established by this Article.

(4) 'Regional Ombudsman' means a person employed by an Area Agency on Aging to carry out the functions of the Regional Ombudsman Office established by this Article."

Sec. 3. G.S. 143B-181.18 reads as rewritten:

"§ 143B-181.18. Office of State Long-Term Care Ombudsman Program/State Ombudsman duties.

The State Ombudsman shall:

(1) Promote community involvement with long-term care ~~provider~~ providers and residents of long-term care facilities and serve as liaison between residents, residents' families, facility personnel, and facility administration;

(2) Supervise the Long-Term Care Program pursuant to rules adopted by the Secretary of the Department of Human Resources pursuant to G.S. 143B-10;

(3) Certify regional ombudsmen. Certification requirements shall include an ~~internship~~ internship, training in the aging process, complaint resolution, long-term care issues, mediation techniques, recruitment and training of volunteers, and relevant federal, State, and local laws, policies, and standards;

(4) Attempt to resolve complaints made by or on behalf of individuals who are residents of long-term care facilities, which complaints relate to administrative action that may adversely affect the health, safety, or welfare of residents;

N.C. Collection / UNC-CH Library

(5) Provide training and technical assistance to regional ombudsmen;
(6) Establish procedures for appropriate access by regional ombudsmen to long-term care facilities and residents' records including procedures to protect the confidentiality of these records and to ensure that the identity of any complainant or resident will not be disclosed ~~without the written consent of the complainant or resident or upon court order;~~ except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.;
(7) Analyze data relating to complaints and conditions in long-term care facilities to identify significant problems and recommend solutions;
(8) Prepare an annual report containing data and findings regarding the types of problems experienced and complaints reported by residents as well as recommendations for resolutions of identified long-term care issues;
(9) Prepare findings regarding public education and community involvement efforts and innovative programs being provided in long-term care facilities; and
(10) Provide information to public agencies, and through the State Ombudsman, to legislators, and others regarding problems encountered by residents or providers as well as recommendations for resolution."

Sec. 4. G.S. 143B-181.20(a) reads as rewritten:

"(a) The State and Regional Ombudsman may enter any long-term care facility and may have reasonable access to any resident in the reasonable pursuit of his function. The Ombudsman may communicate privately and confidentially with residents of the facility individually or in groups. The Ombudsman shall have access to the patient records ~~of any resident, under procedures established by the State Ombudsman pursuant to G.S.143B-181.18(6), provided that the medical and personal financial records pertaining to an individual resident may be inspected only with the permission of the resident or his legally appointed guardian, if any,~~ as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., and under procedures established by the State Ombudsman pursuant to G.S. 143B-181.18(6). Entry shall be conducted in a manner that will not significantly disrupt the provision of nursing or other care to residents and if the long-term care facility requires registration of all visitors entering the facility, then the State or Regional Ombudsman must also register. Any State or Regional Ombudsman who discloses any information obtained from the patient's ~~medical or personal financial records without a court order or without authorization in writing from the resident, or his legal representative,~~ records except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., is guilty of a Class 1 misdemeanor."

Sec. 5. G.S. 143B-181.22 reads as rewritten:

"*§ 143B-181.22. State/Regional Long-Term Care Ombudsman; confidentiality.*

~~The identity of any complainant, resident on whose behalf a complaint is made, or individual providing information on behalf of the resident or complainant relevant to the attempted resolution of a complaint is~~

~~confidential and may be disclosed only with the express permission of the person. The information produced by the process of complaint resolution may be disclosed by the State Ombudsman or Regional Ombudsman only if the identity of any such person is not disclosed by name or inference. If the identity of any such person is disclosed by name or inference in such information, the information may be disclosed only with his express permission. If the complaint becomes the subject of a judicial proceeding, the investigative information may be disclosed for the purpose of the proceeding.~~

The identity of any complainant, resident on whose behalf a complaint is made, or any individual providing information on behalf of the resident or complainant relevant to the attempted resolution of the complaint along with the information produced by the process of complaint resolution is confidential and shall be disclosed only as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq."

Sec. 6. G.S. 131D-32(e) reads as rewritten:

"(e) Each committee shall apprise itself of the general conditions under which the persons are residing in the homes, and shall work for the best interests of the persons in the homes. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level. ~~The names of all complaining persons and the names of residents involved in the complaint shall remain confidential unless written permission is given for disclosure.~~ The identity of any complainant or resident involved in a complaint shall not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq. The committee shall notify the enforcement agency of all verified violations of the Domiciliary Home Residents' Bill of Rights."

Sec. 7. G.S. 131E-128(h) reads as rewritten:

"(h) (1) Each committee shall apprise itself of the general conditions under which the persons are residing in the homes, and shall work for the best interests of the persons in the homes. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level.

(2) Each committee shall quarterly visit the nursing home it serves. For each official quarterly visit, a majority of the committee members shall be present. In addition, each committee may visit the nursing home it serves whenever it deems it necessary to carry out its duties. In counties with four or more nursing homes, the subcommittee assigned to a home shall perform the duties of the committee under this subdivision, and a majority of the subcommittee members must be present for any visit.

(3) Each member of a committee shall have the right between 10:00 A.M. and 8:00 P.M. to enter into the facility the committee serves in order to carry out the members' responsibilities. In a county where subcommittees have been established, this right of access shall be limited to homes

served by those subcommittees to which the member has been appointed.

(4) The committee or subcommittee may communicate through its chair with the Department or any other agency in relation to the interest of any patient. The ~~names of all complaining persons shall remain confidential unless written permission is given for disclosure.~~ identity of any complainant or resident involved in a complaint shall not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.

(5) Each home shall cooperate with the committee as it carries out its duties.

(6) Before entering into any nursing home, the committee, subcommittee, or member shall identify itself to the person present at the facility who is in charge of the facility at that time."

Sec. 8. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

S.B. 416 **CHAPTER 255**

AN ACT TO REVISE THE PROVISION OF THE JUVENILE CODE GOVERNING THE AUTHORITY OF MEDICAL PROFESSIONALS TO CONFORM TO THE REVISED DEFINITION OF ABUSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-549(b) reads as rewritten:

"(b) Immediately upon receipt of judicial authority to retain custody, the physician, the administrator, or his designee shall so notify the director of social services for the county in which the facility is located. The director shall treat this notification as a report of suspected abuse and shall immediately begin an investigation of the case.

(1) If the investigation reveals (i) that it is the opinion of the certifying physician that the juvenile is in need of medical treatment to cure or alleviate physical distress, or to prevent the juvenile from suffering serious physical ~~harm which might result in death, disfigurement, or substantial impairment of bodily function,~~ injury, and (ii) that it is the opinion of the physician that the juvenile should for these reasons remain in the custody of the facility for 12 hours, but (iii) that the juvenile's parent, guardian, custodian or caretaker cannot be reached or, upon request, will not consent to the treatment within the facility, the director shall within the initial 12-hour period file a juvenile petition alleging abuse and setting forth supporting allegations and shall seek a nonsecure custody order. A petition filed and a nonsecure custody order obtained in accordance with this subdivision shall come on for hearing under the regular provisions of this Subchapter unless

the director and the certifying physician together voluntarily dismiss the petition.

(2) In all cases except those described in subdivision (1) above, the director shall conduct his investigation and may initiate juvenile proceedings and take all other steps authorized by the regular provisions of this Subchapter. If the director decides not to file a petition, the physician, the administrator or his designee may ask the prosecutor to review this decision according to the provisions of G.S. 7A-546 and G.S. 7A-547."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

S.B. 554 **CHAPTER 256**

AN ACT TO AUTHORIZE THE PURCHASE OF GOODS AND SERVICES FOR PERSONS WITH DISABILITIES UNDER PROCEDURES THAT ALLOW FLEXIBILITY TO MEET INDIVIDUAL NEEDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-53 reads as rewritten:

"§ *143-53. Rules.*

(a) The Secretary of Administration may adopt rules governing the following:

(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.

(2) Prescribing routine for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. 143-53.1.

(3) Defining contractual services for the purposes of G.S. 143-49(3).

(4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.

(5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding.

(6) Prescribing conditions under which partial, progressive and multiple awards may be made.

(7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.

(8) Providing conditions under which bids may be rejected in whole or in part.

(9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.

(10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.

(11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(12) Repealed by Session Laws 1987, c. 827, s. 216.

(b) In adopting the rules authorized by subsection (a) of this section, the Secretary shall include special provisions for the purchase of goods and services, which provisions are necessary to meet the documented training, work, or independent living needs of persons with disabilities according to the requirements of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act, as amended. The Secretary may consult with other agencies having expertise in meeting the needs of individuals with disabilities in developing these provisions. These special provisions shall establish purchasing procedures that:

(1) Provide for the involvement of the individual in the choice of particular goods, service providers, and in the methods used to provide the goods and services;

(2) Provide the flexibility necessary to meet those varying needs of individuals that are related to their disabilities;

(3) Allow for purchase outside of certified sources of supply and competitive bidding when a single source can provide multiple pieces of equipment, including adaptive equipment, that are more compatible with each other than they would be if they were purchased from multiple vendors;

(4) Permit priority consideration for vendors who have the expertise to provide appropriate and necessary training for the users of the equipment and who will guarantee prompt service, ongoing support, and maintenance of this equipment;

(5) Permit agencies to give priority consideration to suppliers offering the earliest possible delivery date of goods or services especially when a time factor is crucial to the individual's ability to secure a job, meet the probationary training periods of employment, continue to meet job requirements, or avoid residential placement in an institutional setting; and

(6) Allow consideration of the convenience of the provider's location for the individual with the disability.

In developing these purchasing provisions, the Secretary shall also consider the following criteria: (i) cost-effectiveness, (ii) quality, (iii) the provider's general reputation and performance capabilities, (iv) substantial conformity with specifications and other conditions set forth for these purchases, (v) the suitability of the goods or services for the intended use, (vi) the personal or other related services needed, (vii) transportation

charges, and (viii) any other factors the Secretary considers pertinent to the purchases in question.

(c) The purpose of rules promulgated hereunder shall be to promote sound purchasing management.

Prior to adopting rules under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

Sec. 2. This act becomes effective October 1, 1995, and applies to rules for purchases made on or after that date.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

S.B. 585 **CHAPTER 257**

AN ACT TO EXPEDITE EXECUTION OR JUDGMENTS AGAINST THE PROPERTY OF THE JUDGMENT DEBTOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-360 reads as rewritten:

"*§ 1-360. Debtors of judgment debtor may be summoned.*

~~After~~ Upon the issuing or return of an execution ~~unsatisfied~~ against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon affidavit that any person or corporation has property of said judgment debtor, or is indebted to him in an amount exceeding ten dollars ($10.00), the court or judge may, by order, require such person or corporation, or any officer or members thereof, to appear at a specified time and place, and answer concerning the same; provided, however, that such inquiries ~~may~~ may, in the discretion of the court, be answered by such person or corporation, or any officers or members thereof, by verified answers to interrogatories. The court or judge may also, in its or his discretion, require notice of the proceeding to be given to any party to the action, in such manner as seems proper."

Sec. 2. G.S. 1-360.1 reads as rewritten:

"*§ 1-360.1. Execution on the property of debtors of judgment debtor.*

~~After the return of an execution unsatisfied against property of the judgment debtor, or of any one of several debtors in the same judgment, and after~~ After the clerk of superior court determines to the clerk's satisfaction that the debtor of the judgment debtor acknowledged at a proceeding conducted pursuant to G.S. 1-360 that he is in possession of unencumbered property of such judgment debtor or is indebted to him in an amount exceeding ten dollars ($10.00), an execution shall issue against the property or debt of the judgment debtor that the debtor of the judgment debtor acknowledged he holds."

Sec. 3. This act becomes effective October 1, 1995, and applies to judgments entered on or after that date.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

S.B. 616 **CHAPTER 258**

AN ACT TO MAKE IT A FELONY TO MAIM, TO SERIOUSLY INJURE, OR TO KILL A LAW-ENFORCEMENT ANIMAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-163.1 reads as rewritten:

"§ *14-163.1. ~~Injuring~~ Injuring, maiming, or killing law-enforcement agency animal.*

Any person who knows or has reason to know that an animal is used for law-enforcement purposes such as investigation, detection of narcotics or explosives, or crowd control, by any law-enforcement agency and who willfully and not in self defense, causes serious injury ~~to~~ to, maims, or kills that animal is guilty of a Class ~~1 misdemeanor.~~ I felony."

Sec. 2. This act becomes effective December 1, 1995, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

H.B. 333 **CHAPTER 259**

AN ACT TO PROVIDE THAT A REGISTER OF DEEDS WHO COMPLETES SERVICE AFTER TEN YEARS OF ELIGIBLE SERVICE AS REGISTER OF DEEDS BUT DOES NOT COMMENCE RETIREMENT FROM THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM MAY RECEIVE A MONTHLY PENSION FROM THE REGISTER OF DEEDS' SUPPLEMENTAL PENSION FUND UPON RETIREMENT UNDER THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, AND TO CONFORM THE EARNINGS LIMITATIONS OF LOCALLY SPONSORED PLANS TO THOSE OF THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 161-50.4 reads as rewritten:

"§ *161-50.4. Eligibility.*

(a) Each county register of deeds who has retired with at least 12 years eligible service as register of deeds from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan before June 30, 1988, and those who retire on or after June 30, 1988, but before July 1, 1991, and who have completed at least 12 years of eligible service as register of deeds is entitled to receive a monthly pension under this Article, beginning July 1, 1988. Effective July 1, 1991, each county register of deeds who retires with at least 10 years of eligible service as register of deeds is entitled to receive a monthly pension under this Article.

(a1) Notwithstanding the provisions of subsection (a) of this section, effective January 1, 1996, any county register of deeds who separates from service as register of deeds after completing at least 10 years of eligible service as register of deeds, but who does not commence retirement with the

Local Governmental Employees' Retirement System, shall have the right to receive a monthly pension under this Article payable upon retirement with the Local Governmental Employees' Retirement System.

(b) Each eligible retired register of deeds as defined in ~~subsection (a)~~ subsection (a) or (a1) of this section relating to service and retirement status on January 1 of each calendar year shall be entitled to receive a monthly pension under this Article beginning with the month of January of the same calendar year."

Sec. 2. G.S. 161-50.3 reads as rewritten:

"*§ 161-50.3. Disbursements.*

(a) Immediately following July 1, 1988, the Department of State Treasurer shall divide an amount equal to forty-five percent (45%) of the assets of the Fund at the end of the preceding fiscal year into equal shares and disburse the same as monthly pension payments to all eligible retired registers of deeds as of July 1, 1988, payable in accordance with the method described in G.S. 161-50.5, except that such pension benefit shall be computed for a six-months basis beginning with the month of July, 1988.

(b) Immediately following January 1, ~~1989,~~ 1996, and the first of January of each succeeding calendar year thereafter, the Department of State Treasurer shall divide an amount equal to ~~ninety percent (90%)~~ ninety-three percent (93%) of the assets of the Fund at the end of the preceding calendar year into equal shares and disburse the same as monthly payments in accordance with the provisions of this Article.

(c) The remaining ~~ten percent (10%)~~ seven percent (7%) of the Fund's assets as of December 31, ~~1988,~~ 1995, and at the end of each calendar year thereafter, may be used by the Department of State Treasurer in administering the provisions of this Article. ~~For the six-month period commencing July 1, 1988, five percent (5%) of the Fund's assets at the end of the preceding fiscal year may be used for this purpose.~~

(d) All the Fund's disbursements shall be conducted in the same manner as disbursements are conducted for other special funds of the State.

(e) If, for any reason, the Fund shall be insufficient to pay any pension benefits or other charges, then all benefits or payments shall be reduced pro rata for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension payment shall have been reduced."

Sec. 3. G.S. 160A-163 is amended by adding a new subsection to read:

"(g) Should the council provide for a retirement plan, a plan which supplements a State-administered plan, or a special fund, any benefits payable from such plan or fund on account of the disability of city employees may be restricted with regard to the amount which may be earned by the disabled former employee in any other employment, but only to the extent that the earnings of disability beneficiaries in the Local Governmental Employees' Retirement System are restricted in accordance with G.S. 128-27(e)(1)."

Sec. 4. This act becomes effective December 31, 1995.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

H.B. 642 CHAPTER 260

AN ACT TO INCREASE THE SIZE OF THE BOARD OF COMMISSIONERS OF EDGECOMBE COUNTY FROM FIVE TO SEVEN MEMBERS AND PROVIDE FOR THE ELECTORAL DISTRICTS, AND TO ALLOW THE NORTHAMPTON COUNTY BOARD OF SOCIAL SERVICES TO EMPLOY ONE OF ITS MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. Effective the first Monday in December 1996, the Board of Commissioners of Edgecombe County consists of seven members.

Sec. 2. For the purpose of nominating and electing members of the county board of commissioners, Edgecombe County is divided into seven districts, each of which shall nominate and elect one member. The qualified voters of each district established by this act shall nominate candidates and elect a member who resides in that district for the seat apportioned to that district.

Sec. 3. The districts are as follows:

District 1: Edgecombe County: Precinct 3-1 *, Precinct 4-1 *, Precinct 5-1 *, Precinct 6-1 *, Precinct 7-1 *: Tract 0206: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 126B, Block 128B, Block 130B; Block Group 2, Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330, Block 331, Block 332, Block 333, Block 334, Block 335, Block 336, Block 337, Block 338, Block 339, Block 340, Block 341, Block 342, Block 343, Block 344, Block 349, Block 352, Block 353, Block 363, Block 364, Block 365, Block 366; Precinct 12-3 *: Tract 0203: Block Group 7: Block 701, Block 702, Block 703, Block 704, Block 705; Tract 0204: Block Group 7: Block 701, Block 711; Tract 0213: Block Group 1: Block 101, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 133, Block 134, Block 135; Block Group 2: Block 211, Block 212, Block 215.

District 2: Edgecombe County: Precinct 1-1 *, Precinct 1-2 *: Tract 0209: Block Group 2: Block 201, Block 202, Block 203, Block 204A, Block 204B, Block 205, Block 206, Block 207A, Block 207B, Block 208A, Block 208B, Block 211, Block 212, Block 213, Block 214, Block 224, Block 228, Block 229; Precinct 1-4 *.

District 3: Edgecombe County: Precinct 12-1 *: Tract 0202: Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314; Tract 0203: Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 212, Block 213, Block 214, Block 215,

Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227, Block 228, Block 229, Block 230, Block 243; Precinct 12-4 *, Precinct 12-5 *.

District 4: Edgecombe County: Precinct 1-2 *: Tract 0209: Block Group 2: Block 209, Block 210, Block 215, Block 216A, Block 216B, Block 217A, Block 217B, Block 217C, Block 217D, Block 218, Block 219, Block 225, Block 226, Block 227; Tract 0210: Block Group 5: Block 506, Block 507, Block 516, Block 517, Block 518, Block 530, Block 531, Block 532; Block Group 9; Tract 0212: Block Group 2, Block Group 5; Tract 0213: Block Group 2: Block 248A, Block 248B, Block 250; Block Group 3: Block 301A, Block 301B, Block 302, Block 303, Block 304A, Block 304B, Block 305, Block 306A, Block 306B, Block 307, Block 308, Block 318A; Precinct 1-3 *.

District 5: Edgecombe County: Precinct 2-1 *, Precinct 8-1 *, Precinct 9-1 *, Precinct 10-1 *.

District 6: Edgecombe County: Precinct 7-1 *: Tract 0206: Block Group 3: Block 315, Block 345, Block 346, Block 347, Block 348, Block 350, Block 351, Block 354, Block 355, Block 356, Block 357, Block 358, Block 359, Block 360, Block 361, Block 362; Precinct 11-1 *, Precinct 12-1 *: Tract 0203: Block Group 5: Block 501A, Block 502, Block 503, Block 504; Block Group 7: Block 717A, Block 718A, Block 719; Precinct 12-3 *: Tract 0202: Block Group 1: Block 151B, Block 151C, Block 153; Block Group 4: Block 411B, Block 416B, Block 417B, Block 424C, Block 424D, Block 425; Block Group 5: Block 506B, Block 513B, Block 513C, Block 516, Block 520C; Block Group 6: Block 601, Block 602, Block 603, Block 604, Block 605, Block 606, Block 607, Block 608, Block 609, Block 610, Block 611, Block 612, Block 613, Block 614, Block 615, Block 616, Block 617, Block 618, Block 619, Block 620, Block 621, Block 622, Block 623, Block 624, Block 625, Block 626, Block 627, Block 628, Block 632, Block 633; Tract 0203: Block Group 5: Block 501B; Block Group 6: Block 618, Block 619; Block Group 7: Block 706B, Block 707B, Block 708B, Block 709B, Block 710, Block 711, Block 712, Block 713, Block 714, Block 715C, Block 716B, Block 717B, Block 718B, Block 729B, Block 730B, Block 735B; Tract 0204: Block Group 7: Block 702, Block 703B, Block 704B, Block 705, Block 706, Block 707, Block 708C, Block 709B, Block 710, Block 712, Block 713, Block 714, Block 721B, Block 722B; Tract 0213: Block Group 1: Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131, Block 132; Block Group 2: Block 213, Block 214, Block 216, Block 217B, Block 218B; Tract 0214: Block Group 1: Block 101, Block 104, Block 105; Precinct 13-1 *, Precinct 14-1 *.

District 7: Edgecombe County: Precinct 12-1 *: Tract 0202: Block Group 3: Block 315, Block 316, Block 317, Block 318, Block 319, Block 320; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411A, Block 412, Block 413, Block 414, Block 415, Block 416A; Tract 0203: Block Group 2: Block 231, Block 232, Block 233, Block 234, Block 235, Block 236, Block 237, Block 238, Block 239, Block 240, Block 241, Block

242; Block Group 5: Block 505, Block 506, Block 507, Block 508, Block 509, Block 510, Block 511, Block 512, Block 513, Block 514; Block Group 6: Block 601, Block 602, Block 603, Block 604, Block 605, Block 606, Block 607, Block 608, Block 609, Block 610, Block 611, Block 612, Block 613, Block 614, Block 615, Block 616, Block 617; Block Group 7: Block 715A, Block 715B, Block 716A, Block 720, Block 721, Block 722, Block 723, Block 724, Block 725, Block 726, Block 727, Block 728, Block 729A, Block 730A, Block 731, Block 732, Block 733, Block 734, Block 735A; Precinct 12-2 *.

Sec. 4. In 1996, and quadrennially thereafter, four members shall be elected from Districts 1, 2, 3, and 5 for terms of four years.

Sec. 5. In 1998, and quadrennially thereafter, three members shall be elected from Districts 4, 6, and 7 for terms of four years.

Sec. 6. Notwithstanding the provisions of G.S. 14-234, any rule of the State Personnel Commission, or any other provisions of law, the members of the Northampton County Board of Social Services may employ one of its members and may pay such person reasonable compensation, to be approved by the Northampton County Board of County Commissioners.

Sec. 7. Sections 1 through 5 of this act prevail over any act, public or local, to the extent of the conflict.

Sec. 8. This act is effective upon ratification. Sections 1 through 5 of this act are subject to preclearance by the United States Attorney General under section 5 of the Voting Rights Act of 1965.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

H.B. 692 **CHAPTER 261**

AN ACT ALLOWING COUNTIES TO USE ALTERNATIVE METHODS OF NOTIFICATION OF PROPERTY OWNERS OF PROPOSED ZONING NOTICE CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-343(b) reads as rewritten:

"(b) The first class mail notice required under subsection (a) of this section shall not be required in the following situations:

(1) The total rezoning of all property within the boundaries of a county or a zoning area as defined in G.S. 153A-342 unless rezoning involves zoning of parcels of land to less intense or more restrictive uses. If rezoning involves zoning of parcels of land to less intense or more restrictive uses, notification to owners of these parcels shall be made by mail in accordance with subsection (a) of this section;

(2) The zoning is an initial zoning of the entire zoning jurisdiction area;

(3) The zoning reclassification action directly affects more than 50 properties, owned by a total of at least 50 different property owners;

(4) The reclassification is an amendment to the zoning text; or

(5) The county is adopting a water supply watershed protection program as required by G.S. 143-214.5.

In any case where this subsection eliminates the notice required by subsection (a) of this section, a county ~~shall~~ shall, at its option, provide said notice or publish once a week for four successive calendar weeks in a newspaper having general circulation in the area maps showing the boundaries of the area affected by the proposed ordinance or amendment. The map shall not be less than one-half of a newspaper page in size. The notice shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the county's jurisdiction or outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by mail pursuant to this section. The person or persons mailing the notices shall certify to the board of commissioners that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the ~~published~~ notice, a county shall post one or more prominent signs immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

S.B. 82 **CHAPTER 262**

AN ACT TO INCREASE THE AMOUNT OF PROPERTY COLLECTIBLE BY SMALL ESTATE AFFIDAVIT WHERE THE SOLE HEIR AND/OR DEVISEE IS THE SURVIVING SPOUSE, TO INCREASE THE MINIMUM AMOUNT OF INTESTATE PERSONAL PROPERTY PASSING TO THE SURVIVING SPOUSE, AND TO INCREASE THE AMOUNT OF THE YEAR'S ALLOWANCE FOR A SURVIVING SPOUSE AND CHILDREN, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO INCREASE THE LIMITATION FOR FUNERAL EXPENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-25-1(a) reads as rewritten:

"(a) When a decedent dies intestate leaving personal property, less liens and encumbrances thereon, not exceeding ten thousand dollars ($10,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, or an heir or creditor of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir or creditor or the public administrator stating:

(1) The name and address of the affiant and the fact that he or she is the public administrator or an heir or creditor of the decedent;
(2) The name of the decedent and his residence at time of death;
(3) The date and place of death of the decedent;
(4) That 30 days have elapsed since the death of the decedent;
(5) That the value of all the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed ten thousand dollars ($10,000);
(6) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
(7) The names and addresses of those persons who are entitled, under the provisions of the Intestate Succession Act, to the personal property of the decedent and their relationship, if any, to the decedent; and
(8) A description sufficient to identify each tract of real property owned by the decedent at the time of his death.

In those cases in which the affiant is the surviving spouse and sole heir of the decedent, not disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected pursuant to this section may exceed ten thousand dollars ($10,000) in value but shall not exceed twenty thousand dollars ($20,000) in value. In such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that he or she is the surviving spouse and is entitled, under the provisions of the Intestate Succession Act, to all of the property of the decedent; (ii) that the value of all of the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed twenty thousand dollars ($20,000); and (iii) the information required under subdivisions (2), (3), (4), (6), and (8) of this subsection."

Sec. 2. G.S. 28A-25-1.1(a) reads as rewritten:

"(a) When a decedent dies testate leaving personal property, less liens and encumbrances thereon, not exceeding ten thousand dollars ($10,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir, the person named or designated as executor in the will of the decedent, the creditor, the public administrator, or the devisee, stating:

(1) The name and address of the affiant and the fact that he is the public administrator, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent;
(2) The name of the decedent and his residence at time of death;
(3) The date and place of death of the decedent;
(4) That 30 days have elapsed since the death of the decedent;

(5) That the decedent died testate leaving personal property, less liens and encumbrances thereon, not exceeding ten thousand dollars ($10,000) in value;

(6) That the decedent's will has been admitted to probate in the court of the proper county and a duly certified copy of the will has been recorded in each county in which is located any real property owned by the decedent at the time of his death;

(7) That a certified copy of the decedent's will is attached to the affidavit;

(8) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;

(9) The names and addresses of those persons who are entitled, under the provisions of the will, or if applicable, of the Intestate Succession Act, to the property of the decedent; and their relationship, if any, to the decedent; and

(10) A description sufficient to identify each tract of real property owned by the decedent at the time of his death.

In those cases in which the affiant is the surviving spouse, is entitled to all of the property of the decedent, and is not disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected pursuant to this section may exceed ten thousand dollars ($10,000) in value but shall not exceed twenty thousand dollars ($20,000) in value. In such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that he or she is the surviving spouse and is entitled, under the provisions of the decedent's will, or if applicable, of the Intestate Succession Act, to all of the property of the decedent; (ii) that the decedent died testate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000); and (iii) the information required under subdivisions (2), (3), (4), (6), (7), (8), and (10) of this subsection."

Sec. 3. G.S. 29-14(b) reads as rewritten:

"(b) Personal Property. -- The share of the surviving spouse in the personal property is:

(1) If the intestate is survived by only one child or by any lineal descendant of only one deceased child, and the net personal property does not exceed ~~fifteen~~ thirty thousand dollars ~~($15,000)~~ ($30,000) in value, all of the personal property; if the net personal property exceeds ~~fifteen~~ thirty thousand dollars ~~($15,000)~~ ($30,000) in value, the sum of ~~fifteen~~ thirty thousand dollars ~~($15,000)~~ ($30,000) plus one half of the balance of the personal property;

(2) If the intestate is survived by two or more children, or by one child and any lineal descendant of one or more deceased children, or by lineal descendants of two or more deceased children, and the net personal property does not exceed ~~fifteen~~ thirty thousand dollars ~~($15,000)~~ ($30,000) in value, all of the personal property; if the net personal property exceeds ~~fifteen~~ thirty thousand dollars ~~($15,000)~~ ($30,000) in value, the sum of ~~fifteen~~ thirty thousand dollars ~~($15,000)~~ ($30,000) plus one third of the balance of the personal property;

(3) If the intestate is not survived by a child, children, or any lineal descendant of a deceased child or children, but is survived by one or more parents, and the net personal property does not exceed ~~twenty-five~~ fifty thousand dollars ~~($25,000)~~ ($50,000) in value, all of the personal property; if the net personal property exceeds ~~twenty-five~~ fifty thousand dollars ~~($25,000)~~ ($50,000) in value, the sum of ~~twenty-five~~ fifty thousand dollars ~~($25,000)~~ ($50,000) plus one half of the balance of the personal property;

(4) If the intestate is not survived by a child, children, or any lineal descendant of a deceased child or children, or by a parent, all of the personal property."

Sec. 4. G.S. 30-15 reads as rewritten:

"*§ 30-15. When spouse entitled to allowance.*

Every surviving spouse of an intestate or of a testator, whether or not he has dissented from the will, shall, unless he has forfeited his right thereto as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of ~~five~~ ten thousand dollars ~~($5,000)~~ ($10,000) for his support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse."

Sec. 5. G.S. 30-17 reads as rewritten:

"*§ 30-17. When children entitled to an allowance.*

Whenever any parent dies leaving any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be entitled, besides its share of the estate of such deceased parent, to an allowance of ~~one~~ two thousand dollars ~~($1,000)~~ ($2,000) for its support for the year next ensuing the death of such parent, less, however, the value of any articles consumed by said child since the death of said parent. Such allowance shall be exempt from any lien by judgment or execution against the property of such parent. The personal representative of the deceased parent, within one year after the parent's death, shall assign to every such child the allowance herein provided for; but if there is no personal representative or if he fails or refuses to act within 10 days after written request by a guardian or next friend on behalf of such child, the allowance may be assigned by a magistrate, upon application of said guardian or next friend.

If the child resides with the widow of the deceased parent at the time such allowance is paid, the allowance shall be paid to said widow for the benefit of said child. If the child resides with its surviving parent who is other than the widow of the deceased parent, such allowance shall be paid to said surviving parent for the use and benefit of such child, regardless of whether the deceased died testate or intestate or whether the widow dissented from

the will. Provided, however, the allowance shall not be available to an illegitimate child of a deceased father, unless such deceased father shall have recognized the paternity of such illegitimate child by deed, will or other paper-writing. If the child does not reside with a parent when the allowance is paid, it shall be paid to its general guardian, if any, and if none, to the clerk of the superior court who shall receive and disburse same for the benefit of such child."

Sec. 6. G.S. 30-26 reads as rewritten:

"*§ 30-26. When above allowance is in full.*

If the estate of a deceased be insolvent, or if his personal estate does not exceed ~~five~~ ten thousand dollars ~~($5,000),~~ ($10,000), the allowances for the year's support of the surviving spouse and the children shall not, in any case, exceed the value prescribed in G.S. 30-15 and 30-17; and the allowances made to them as above prescribed shall preclude them from any further allowances."

Sec. 7. G.S. 30-29 reads as rewritten:

"*§ 30-29. What complaint must show.*

In the complaint the plaintiff shall set forth, besides the facts entitling plaintiff to a year's support and the value of the support claimed, the further facts that the estate of the decedent is not insolvent, and that the personal estate of which he died possessed exceeded ~~five~~ ten thousand dollars ~~($5,000),~~ ($10,000), and also whether or not an allowance has been made to plaintiff and the nature and value thereof."

Sec. 8. G.S. 28A-19-6 reads as rewritten:

"*§ 28A-19-6. Order of payment of claims.*

After payment of costs and expenses of administration, the claims against the estate of a decedent must be paid in the following order:

First class. Claims which by law have a specific lien on property to an amount not exceeding the value of such property.

Second class. Funeral expenses to the extent of two thousand five hundred dollars ~~($2,000),~~ ($2,500). This limitation shall not include cemetery lot or gravestone. The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable funeral expenses which may be incurred; nor shall the preferential limitation of payment in the amount of two thousand five hundred dollars ~~($2,000)~~ ($2,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to his or her beneficiaries.

Third class. All dues, taxes, and other claims with preference under the laws of the United States.

Fourth class. All dues, taxes, and other claims with preference under the laws of the State of North Carolina and its subdivisions.

Fifth class. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the decedent at his death.

Sixth class. Wages due to any employee employed by the decedent, which claim for wages shall not extend to a period of more than 12 months next preceding the death; or if such employee was employed for the year current at the decease, then from the time of such employment; for medical services

within the 12 months preceding the decease; for drugs and all other medical supplies necessary for the treatment of such decedent during the last illness of such decedent, said period of last illness not to exceed 12 months.

Seventh class. All other claims."

Sec. 9. This act becomes effective October 1, 1995, and applies to estates of persons dying on or after that date.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

S.B. 349

CHAPTER 263

AN ACT TO REVISE THE MEMBERSHIP OF THE HOUSING COORDINATION AND POLICY COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122A-5.11 reads as rewritten:

"*§ 122A-5.11. Council membership; compensation; procedures.*

(a) The Housing Coordination and Policy Council shall consist of 15 representatives, as follows:

(1) ~~Two members~~ One member of the N.C. Housing Partnership who ~~are~~ is experienced with housing programs for low-income persons, as designated by the chair.

(2) ~~Two members~~ One member of the Community Development Council who ~~are~~ is experienced with federal, State, and local housing programs, as designated by the chair.

(3) ~~Two members~~ One member of the N.C. Housing Finance Agency Board of Directors who ~~are~~ is experienced with real estate finance and development, as designated by the chair.

(4) One member of the Weatherization Policy Advisory Council who is experienced with community weatherization programs, as designated by the chair.

(5) One member of the Governor's Advocacy Council for Persons with Disabilities who is familiar with the housing needs of the disabled.

(6) The executive director of the Commission of Indian Affairs, or a designee familiar with Indian housing programs.

(7) The ~~Deputy Secretary or~~ Assistant Secretary of Community Development and Housing, or a designee familiar with housing programs related to community development and housing functions.

(8) The ~~assistant secretary~~ director of the Division of Aging, or a designee familiar with the housing programs of the Division.

(9) The executive director of the N.C. Housing Finance Agency, or a designee familiar with the housing programs of the Agency.

(10) The director of the Division of Mental Health, or a designee familiar with housing for those with mental disabilities.

(11) The executive director of the N.C. Human Relations Commission, or a designee familiar with federal and State fair housing laws.

(12) ~~A chair designated by the Governor.~~ The head of the AIDS Care Branch, or a designee familiar with the housing programs of the Division of Adult Health Promotion.

(13) The director of the Office of Economic Opportunity, or a designee familiar with programs for the homeless.

(14) Two members of nonprofit organizations who are experienced with housing advocacy for low-income persons and State and federal housing programs.

(b) All members except those serving ex officio shall be appointed by the Governor. The Governor shall designate one member of the Council to serve as Chair.

(c) The initial members of the Council other than those serving ex officio shall be appointed to serve for terms of four years and until their successors are appointed and qualified. Any appointment to fill a vacancy created by resignation, dismissal, death, or disability of a member shall be for the balance of the term.

(d) Members of the Council may receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(e) A majority of the Council shall constitute a quorum for the transaction of business.

(f) All clerical and other services required by the Council shall be supplied by the Housing Finance Agency."

Sec. 2. This act is effective upon ratification. Members serving on the Council as of the effective date of this act shall continue to serve their term of office. Upon completion of these terms, or their resignation or removal from office, the Governor shall make appointments that meet the position qualifications of this act.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

S.B. 505 **CHAPTER 264**

AN ACT TO CLARIFY THE GROUNDS FOR REMOVAL OF A MEMBER OF A LOCAL BOARD OF HEALTH.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-35(g) reads as rewritten:

"(g) A member may be removed from office by the county board of commissioners ~~for cause.~~ for:

(1) Commission of a felony or other crime involving moral turpitude;

(2) Violation of a State law governing conflict of interest;

(3) Violation of a written policy adopted by the county board of commissioners;

(4) Habitual failure to attend meetings;

(5) Conduct that tends to bring the office into disrepute; or

(6) Failure to maintain qualifications for appointment required under subsection (b) of this section.

A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond."

Sec. 2. G.S. 130A-37(h) reads as rewritten:

"(h) A member may be removed from office by the district board of health ~~for cause.~~ for:

(1) Commission of a felony or other crime involving moral turpitude;
(2) Violation of a State law governing conflict of interest;
(3) Violation of a written policy adopted by the county board of commissioners of each county in the district;
(4) Habitual failure to attend meetings;
(5) Conduct that tends to bring the office into disrepute; or
(6) Failure to maintain qualifications for appointment required under subsection (b) of this section.

A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond."

Sec. 3. This act becomes effective October 1, 1995, and applies to acts occurring after the effective date. No proceeding for removal begun before the effective date, and no removal that has occurred before the effective date, shall be subject to the provisions of this act.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

S.B. 519 **CHAPTER 265**

AN ACT TO ENCOURAGE THE PURCHASE OF COMMODITIES AND SERVICES OFFERED BY BLIND AND BY SEVERELY DISABLED PERSONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-49 is amended by adding the following new subdivision:

"(7) To evaluate the nonprofit qualifications and capabilities of qualified work centers to manufacture commodities or perform services."

Sec. 2. G.S. 143-48 reads as rewritten:

"*§ 143-48. State policy; cooperation in promoting the use of small, minority, physically handicapped and women contractors; purpose; required annual reports.*

(a) Policy. -- It is the policy of this State to encourage and promote the use of small, minority, physically handicapped and women contractors in State purchasing of goods and services. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage the use of small, minority, physically handicapped and women contractors in achieving the purpose of this Article, which is to provide for the effective and economical acquisition, management and disposition of goods and services by and through the Department of Administration.

(b) Reporting. -- Every governmental entity required by statute to use the services of the Department of Administration in the purchase of goods and services and every private, nonprofit corporation other than an institution of higher education or a hospital that receives an appropriation of five hundred thousand dollars ($500,000) or more during a fiscal year from the General Assembly shall report to the department of Administration annually on what percentage of its contract purchases of goods and services, through term contracts and open-market contracts, were from minority-owned businesses, what percentage from female-owned businesses, what percentage from disabled-owned ~~businesses and~~ businesses, what percentage from disabled business enterprises and what percentage from nonprofit work centers for the blind and the severely disabled. The same governmental entities shall include in their reports what percentages of the contract bids for such purchases were from such businesses. The Department of Administration shall provide instructions to the reporting entities concerning the manner of reporting and the definitions of the businesses referred to in this act, provided that, for the purposes of this act:

(1) Except as provided in subdivision (1a) of this section, a business in one of the categories above means one:
   a. In which at least fifty-one percent (51%) of the business, or of the stock in the case of a corporation, is owned by one or more persons in the category; and
   b. Of which the management and daily business operations are controlled by one or more persons in the category who own it.

(1a) A 'disabled business enterprise' means a nonprofit entity whose main purpose is to provide ongoing habilitation, rehabilitation, independent living, and competitive employment for persons who are handicapped through supported employment sites or business operated to provide training and employment and competitive wages.

(1b) A 'nonprofit work center for the blind and the severely disabled' means an agency:
   a. Organized under the laws of the United States or this State, operated in the interest of the blind and the severely disabled, the net income of which agency does not inure in whole or in part to the benefit of any shareholder or other individual;
   b. In compliance with any applicable health and safety standard prescribed by the United States Secretary of Labor; and
   c. In the production of all commodities or provision of services, employs during the current fiscal year severely handicapped individuals for (i) a minimum of seventy-five percent (75%) of the hours of direct labor required for the production of commodities or provision of services, or (ii) in accordance with the percentage of direct labor required under the terms and conditions of Public Law 92-28 (41 U.S.C. § 46, et seq.) for the production of commodities or provision of services, whichever is less.

(2) A female or a disabled person is not a minority, unless the female or disabled person is also a member of one of the minority groups described in G.S. 143-128(2)a through d.

(3) A disabled person means a ~~'handicapped person' as defined in G.S. 168A-3,~~ person with a handicapping condition as defined in G.S. 168-1 or G.S. 168A-3.

The Department of Administration shall collect and compile the data described in this section and report it annually to the General Assembly.

In seeking contracts with the State, a disabled business enterprise must provide assurances to the Secretary of Administration that the payments that would be received from the State under these contracts are directed to the training and employment of and payment of competitive wages to handicapped employees."

Sec. 3. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-48.2. Procurement program for nonprofit work centers for the blind and the severely disabled.*

(a) An agency subject to the provisions of this Article for the procurement of goods may purchase goods directly from a nonprofit work center for the blind and severely disabled, subject to the following provisions:

(1) The purchase may not exceed the applicable expenditure benchmark under G.S. 143-53.1.

(2) The goods must not be available under a State requirements contract.

(3) The goods must be of suitable price and quality, as determined by the agency.

(b) An agency subject to the provisions of this Article for the procurement of services may purchase services directly from a nonprofit work center for the blind and severely disabled, subject to the following provisions:

(1) The services must not be available under a State requirements contract.

(2) The services must be of suitable price and quality, as determined by the agency.

(c) The provisions of G.S. 143-52 shall not apply to purchases made pursuant to this section. However, nothing in this section shall prohibit a nonprofit work center for the blind and severely disabled from submitting bids or making offers for contracts under G.S. 143-52.

(d) For the purpose of this subsection, a 'nonprofit work center for the blind and severely disabled' has the same meaning as under G.S. 143-48."

Sec. 4. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-129.5. Purchases from nonprofit work centers for the blind and severely disabled.*

Notwithstanding G.S. 143-129, a city, county, or other governmental entity subject to this Article may purchase goods and services directly from a nonprofit work center for the blind and severely disabled, as defined in G.S. 143-48.

The Department of Administration shall report annually to the Joint Legislative Commission on Governmental Operations on its administration of this program."

Sec. 5. This act becomes effective January 1, 1996, applies to contracts for which bids or offers are solicited on or after that date, and expires January 1, 2000.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

S.B. 679 **CHAPTER 266**

AN ACT TO VALIDATE CERTAIN ACTIONS OF WATER AND SEWER DISTRICTS AND TO PROVIDE FOR PAYMENT OF RELOCATION COSTS OF WATER AND SEWER LINES BELONGING TO CERTAIN MUNICIPALITIES.

The General Assembly of North Carolina enacts:

Section 1. Article 6 of Chapter 162A of the General Statutes is amended by adding a new section to read:

"*§ 162A-94. Certain actions validated.*

Any contract entered into by a county water and sewer district on or before February 1, 1995, is not invalid because of failure to comply with Article 8 of Chapter 143 of the General Statutes."

Sec. 1.1. G.S. 136-27.1 reads as rewritten:

"*§ 136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or sewer corporations or associations.*

The Department of Transportation shall pay the nonbetterment cost for the relocation of water and sewer lines, located within the existing State highway right-of-way, that are necessary to be relocated for a State highway improvement project and that are owned by: (i) a municipality with a population of 5,500 or less according to the latest decennial census; (ii) a nonprofit water or sewer association or corporation; (iii) any water or sewer system organized pursuant to Chapter 162A of the General Statutes; (iv) a rural water system operated by county as an enterprise system; ~~or~~ (v) any sanitary district organized pursuant to Part 2 of Article 2 of Chapter 130A of the General ~~Statutes.~~ Statutes; or (vi) constructed by a water or sewer system organized pursuant to Chapter 162A of the General Statutes and then sold or transferred to a municipality with a population of greater than 5,500 according to the latest decennial census."

Sec. 2. This act is effective upon ratification and shall not affect pending litigation.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

S.B. 686 **CHAPTER 267**

AN ACT TO CLARIFY THE VOTING AUTHORITY OF MEMBERS OF THE STATE BANKING COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-92.1 reads as rewritten:

"*§ 53-92.1. Commission bound by requirements imposed on Commissioner as to certification of new banks, establishment of branches, etc.*

Notwithstanding any other provisions of this Chapter, the State Banking Commission, in the exercise of its authority to review the action of the Commissioner of Banks, shall be bound by the requirements, conditions and limitations imposed in this Chapter on ~~said Commissioner as to the certification of new banks or the establishments of branch banks or teller's windows.~~ the Commissioner as to the certification of new banks, establishment of branches or limited service facilities, or any other matters which may properly come before the Commissioner for review. Notwithstanding any other provision of law, members of the Commission may act on any matter before the Commission, provided however, a member may not vote on an application or other proceeding involving an institution in which the member has a financial interest or with which the member is affiliated."

Sec. 1.1. Section 19 of Chapter 129 of the 1995 Session Laws is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

S.B. 818 **CHAPTER 268**

AN ACT TO ESTABLISH A BIRTH DEFECTS MONITORING PROGRAM IN THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 130A of the General Statutes is amended by adding the following new Part to read:

"Part 7. Birth Defects.

"*§ 130A-131.16. Birth defects monitoring program established; definitions.*

(a) The Birth Defects Monitoring Program is established within the State Center for Health and Environmental Statistics. The Birth Defects Monitoring Program shall compile, tabulate, and publish information related to the incidence and prevention of birth defects.

(b) As used in this Part, unless the context clearly requires otherwise, the term:

(1) 'Birth defect' means any physical, functional, or chemical abnormality present at birth that is of possible genetic or prenatal origin.

(2) 'Program' means the Birth Defects Monitoring Program established under this Part.

(c) Physicians and persons in charge of licensed medical facilities shall, upon request, permit staff of the Program to examine, review, and obtain a copy of any medical record in their possession or under their control that

pertains to a diagnosed or suspected birth defect, including the records of the mother.

(d) A physician or person in charge of a licensed medical facility who permits examination, review, or copying of medical records pursuant to this section shall be immune from civil or criminal liability that might otherwise be incurred or imposed for providing access to these medical records based upon invasion of privacy or breach of physician-patient confidentiality.

"§ *130A-131.17. Confidentiality of information; research.*

(a) All information collected and analyzed by the Program pursuant to this Part shall be confidential insofar as the identity of the individual patient is concerned. This information shall not be considered public record open to inspection. Access to the information shall be limited to Program staff authorized by the Director of the State Center for Health and Environmental Statistics. The Director of the State Center for Health and Environmental Statistics may also authorize access to this information to persons engaged in demographic, epidemiological, or other similar scientific studies related to health. The Commission shall adopt rules that establish strict criteria for the use of monitoring Program information for scientific research. All persons given authorized access to Program information shall agree, in writing, to maintain confidentiality.

(b) All scientific research proposed to be conducted by persons other than authorized Program staff using the information from the Program, shall first be reviewed and approved by the Director of the State Center for Health and Environmental Statistics and an appropriate committee for the protection of human subjects which is approved by the United States Department of Health and Human Services pursuant to Part 46 of Title 45 of the Code of Federal Regulations. Satisfaction of the terms of the Commission's rules for data access shall entitle the researcher to obtain information from the Program and, if part of the research protocol, to contact case subjects.

(c) Whenever authorized Program staff propose a research protocol that includes contacting case subjects, the Director of the State Center for Health and Environmental Statistics shall submit a protocol describing the research to the State Health Director and to an appropriate committee for the protection of human subjects which is approved by the United States Department of Health and Human Services pursuant to Part 46 of Title 45 of the Code of Federal Regulations. If and when the protocol is approved by the committee and by the State Health Director pursuant to the rules of the Commission, then Program staff shall be entitled to complete the approved project and to contact case subjects.

(d) The Program shall maintain a record of all persons who are given access to the information in the system. The record shall include the following:

(1) The name of the person authorizing access;
(2) The name, title, and organizational affiliation of persons given access;
(3) The dates of access; and
(4) The specific purposes for which information is to be used.

The record required under this subsection shall be open to public inspection during normal operating hours.

(e) Nothing in this section prohibits the Program from publishing statistical compilations relating to birth defects that do not in any way identify individual patients."

Sec. 2. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

S.B. 967 **CHAPTER 269**

AN ACT TO ESTABLISH A PILOT PROGRAM TO PERMIT COMMUNITY COLLEGES TO USE INMATE LABOR FOR CAPITAL CONSTRUCTION PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. There is established a pilot correction education program that would allow prison inmates to participate in community college capital construction projects. The Department of Community Colleges may contract with the Department of Correction for the use of prison inmates in these projects. The State Board of Community Colleges shall designate up to five community colleges that are equally distributed geographically throughout the State to participate in the pilot program.

Inmate participation in capital construction projects shall be related to courses contained in the pilot correction education program. The pilot program shall provide practical experience for the construction-related skills taught in courses the inmates are enrolled in or have been enrolled in.

The State Board of Community Colleges shall develop an application process that encourages colleges to apply for these pilot projects. The State Board of Community Colleges may use funds from the Board Reserve for the pilot projects.

The State Board of Community Colleges shall report to the General Assembly prior to January 1, 1997, on the progress of the pilot program. The report shall contain a recommendation on whether the program should be expanded statewide.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

H.B. 341 **CHAPTER 270**

AN ACT TO ESTABLISH REQUIREMENTS FOR INDIVIDUALS TO REPORT WORK SEARCH EFFORTS IN ORDER TO REMAIN ELIGIBLE FOR UNEMPLOYMENT BENEFITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-13(a)(1) reads as rewritten:

"(1) ~~He~~ The individual has registered for work at and thereafter has continued to report at an employment office at regular intervals no more than four weeks apart and in accordance with such regulations as the Commission may prescribe;".

Sec. 2. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

H.B. 792 **CHAPTER 271**

AN ACT TO DIRECT THE UTILITIES COMMISSION TO PROVIDE THAT EACH FRANCHISED NATURAL GAS DISTRIBUTION COMPANY SHALL EXPAND SERVICE TO ALL AREAS OF ITS FRANCHISE TERRITORY WITHIN THREE YEARS OR LOSE ITS EXCLUSIVE RIGHTS TO THE FRANCHISE TERRITORY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-36A(b) reads as rewritten:

"(b) The Commission shall develop rules to carry out the intent of subsection (a) of this section, and to produce an orderly system for reviewing current levels of natural gas service and planning the orderly expansion of natural gas service to areas not served. These rules shall provide for expansion of service by each franchised natural gas local distribution company to all areas of its franchise territory by July 1, 1998 or within three years of the time the franchise territory is awarded, whichever is later, and shall provide that any local distribution company that the Commission determines is not providing adequate service to at least some portion of each county within its franchise territory by July 1, 1998 or within three years of the time the franchise territory is awarded, whichever is later, shall forfeit its exclusive franchise rights to that portion of its territory not being served."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

S.B. 20 **CHAPTER 272**

AN ACT TO AMEND THE SCHOOL IMPROVEMENT AND ACCOUNTABILITY ACT OF 1989.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-238.1 reads as rewritten:

"*§ 115C-238.1. Performance-based Accountability Program; development and implementation by State Board.*

The General Assembly believes that all children can learn. It is the intent of the General Assembly that the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential. With that mission as its guide, the State Board of Education shall develop and implement a Performance-based Accountability Program. The primary goal of the Program shall be to improve student performance. The State Board of ~~Education~~ Education, after consultation with the Task Force on Site-Based Management, shall adopt:

(1) Procedures and guidelines through ~~which, beginning with the 1990-91 fiscal year,~~ which local school administrative units may participate in the Program; and

(2) Guidelines for developing local school improvement plans with three-year ~~student performance goals and annual milestones to measure progress in meeting those goals;~~ school and student performance goals and strategies to achieve the standards adopted by the State Board. The guidelines shall require each participating local school administrative unit to submit plans for each school in the unit for achieving those goals. The guidelines shall also require each local school administrative unit to report on an annual basis on progress made in achieving those goals at each school in the unit.

The school performance goals may, in the discretion of the State Board, but are not required to include factors such as community involvement, parent involvement, professional development of teachers, and the school climate with regard to the safety of students and employees and the use of positive discipline.

~~(3) A set of student performance indicators for measuring and assessing student performance in the participating local school administrative units. These indicators shall include attendance rates, dropout rates, test scores, parent involvement, and post-secondary outcomes; and~~

~~(4) Guidelines for school performance indicators for measuring and assessing school performance in the participating local school administrative units. These indicators shall concern how to gauge community involvement, parent involvement, professional development of teachers, and the school climate with regard to the safety of students and employees and the use of positive discipline. These indicators shall not rely predominantly on test scores.~~"

Sec. 2. G.S. 115C-238.2(b) reads as rewritten:

"(b) Local school administrative units that participate in the Performance-based Accountability Program:

(1) Are exempt from State requirements to submit reports and plans, other than local school improvement plans, to the State Board of Education and the Department of Public Instruction. They are not exempt from federal requirements to submit reports and plans to the Department.

(2) Are subject to the performance standards but not the opportunity standards or the staffing ratios of the State Accreditation Program. ~~The performance standards in the State Accreditation Program, modified to reflect the results of end-of-course and end-of-grade tests, may serve as the basis for developing the student performance indicators adopted by the State Board of Education pursuant to G.S. 115C-238.1.~~

~~(3) May receive funds for differentiated pay for certain State-paid employees, in accordance with G.S. 115C-238.4, if they elect to participate in a differentiated pay plan.~~

(4) May be allowed increased flexibility in the expenditure of State funds, in accordance with G.S. 115C-238.5.

(5) May be granted waivers of certain State laws, regulations, and policies that inhibit their ability to reach local accountability goals, in accordance with G.S. 115C-238.6(a).

(6) Shall continue to use the Teacher Performance Appraisal Instrument (TPAI) for evaluating beginning teachers during the first three years of their employment; they may, however, develop other evaluation approaches for teachers who have attained career status.

The Department of Public Instruction shall provide technical assistance, including the provision of model evaluation processes and instruments, to local school administrative units that elect to develop dual personnel evaluation processes. A dual personnel evaluation process includes (i) an evaluation designed to provide information to guide teachers in their professional growth and development, and (ii) an evaluation to provide information to make personnel decisions pertaining to hiring, termination, promotion, and reassignment."

Sec. 3. G.S. 115C-238.3 reads as rewritten:

"*§ 115C-238.3. Development of local plans; elements of local plans.*

(a) Development of systemwide plan by the local board of education. -- The board of education of a local school administrative unit that elects to participate in the Program shall develop and submit a local school improvement plan for the entire local school administrative unit to the State Superintendent of Public Instruction before April 15 of the fiscal year preceding the fiscal year in which participation is sought.

A systemwide improvement plan shall remain in effect for no more than three years.

(b) Establishment of school and student performance goals and a systemwide staff development plan by the local board of education for the systemwide plan. -- The local board of education shall establish school and student performance goals and a systemwide staff development plan for the local school administrative unit for inclusion in the systemwide plan. ~~The local board of education shall actively involve an advisory panel composed of a substantial number of teachers, school administrators, other school staff, and parents of children enrolled in the local school administrative unit, in developing the student performance goals for the local school improvement plan. Parents serving on advisory panels shall not be employees of the school unit and shall reflect the racial and socioeconomic composition of the students enrolled in the local school administrative unit. The advisory panel shall ensure substantial parent participation. It is the intent of the General Assembly that teachers have a major role in developing the student performance goals for the local school improvement plan; therefore, at least half of the members participating in this advisory panel shall be teachers. Every teacher in the local school administrative unit shall have an opportunity to elect by secret ballot the teachers who are involved in the advisory panel.~~

(1) School and student performance goals. -- The performance goals for the local school administrative unit shall address specific, measurable goals for all ~~student and school performance indicators~~ standards adopted by the State Board. Factors that determine gains in achievement vary from school to school; therefore, socioeconomic factors and previous progress toward school and student performance ~~indicators~~ goals shall be used as the basis of the local school improvement plan.

(2) Systemwide staff development plan. -- The systemwide staff development plan shall be consistent with the systemwide goals and shall include a component to accommodate the staff development needs at the building level as expressed in each building's improvement plan. In designing this component of the systemwide staff development plan, direct allocation of a needed portion of the staff development funds to the building level shall be given first priority. Each school building shall have the flexibility to combine its staff development allocation with other schools in the local school administrative unit when the staff development needs of those schools are substantially similar as expressed in their approved building-level plans.

(3) Advisory panel. -- The local board of education shall actively involve an advisory panel composed of a substantial number of teachers, school administrators, other school staff, and parents of children enrolled in the local school administrative unit, in developing and achieving the student and school performance goals for the local school improvement plan. Parents serving on an advisory panel shall not be employees of the school unit and shall reflect the racial and socioeconomic composition of the students enrolled in the local school administrative unit. The advisory panel shall ensure substantial parent participation. It is the intent of the General Assembly that teachers have a major role in developing the school and student performance goals for the local school improvement plan; therefore, at least half of the members participating in this advisory panel shall be teachers. Every teacher in the local school administrative unit shall have an opportunity to elect by secret ballot the teachers who are involved in the advisory panel.

(b1) Development by each school of strategies for attaining local school and student performance goals. -- The principal of each school, representatives of the ~~building-level staff,~~ assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building, and parents of children enrolled in the school shall constitute a school improvement team to develop a building-level plan to address school and student performance goals appropriate to that school from those established by the local board of education. Parents serving on ~~building-level committees~~ school improvement teams shall reflect the racial and socioeconomic composition of the students enrolled in that school and shall not be members of the building-level staff. Parental involvement is a critical component of school success and positive student outcomes;

therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school and student performance goals at the building level. To this end, ~~building-level advisory board~~ school improvement team meetings shall be held at a convenient time to assure substantial parent participation. The strategies for attaining local school and student performance goals shall include a plan for the use of staff development funds that may be made available to the school by the local board of education to implement the building-level plan. These strategies may also include requests for waivers of State laws, regulations, or policies for that school. A request for a waiver shall (i) identify the State laws, regulations, or policies that inhibit the local unit's ability to reach its local accountability goals, (ii) set out with specificity the circumstances under which the waiver may be used, and (iii) explain how a waiver of those laws, regulations, or policies will permit the local unit to reach its local goals.

Support among affected staff members is essential to successful implementation of a building-level plan to address school and student performance goals appropriate to a school; therefore, the principal of the school shall present the proposed building-level plan to all of the ~~staff~~ principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for their review and vote. The vote shall be by secret ballot. The principal may submit the building-level plan to the local board of education for inclusion in the systemwide plan only if the proposed building-level plan has the approval of a majority of the staff who voted on the plan.

The local board of education shall accept or reject the building-level plan. The local board shall not make any substantive changes in any building-level plan that it accepts; the local board shall set out any building-level plan that it accepts in the systemwide plan. If the local board rejects a building-level plan, the local board shall state with specificity its reasons for rejecting the plan; the ~~principal of the school for which the plan was rejected, representatives of the building-level staff, and parents of children enrolled in the school~~ school improvement team may then prepare another plan, present it to the ~~building-level staff~~ principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for a vote, and submit it to the local board for inclusion in the systemwide plan. If no building-level plan is accepted for a school before March 15 of the fiscal year preceding the fiscal year in which participation is sought, the local board may develop a plan for the school for inclusion in the systemwide plan; the General Assembly urges the local board to utilize the proposed building-level plan to the maximum extent possible when developing such a plan.

(b2) Waivers concerning central office staff. -- A local board of education may request waivers of State laws, regulations, or policies which are included in the building plans described in subsection (b1) of this section, and it may also request waivers which affect the organization, duties, and assignment of central office staff only. Provided, none of the duties to be performed pursuant to G.S. 115C-436 may be waived. A request for a waiver shall (i) identify the State laws, regulations, or policies that inhibit the local unit's ability to reach its local accountability goals, (ii)

set out with specificity the circumstances under which the waiver may be used, and (iii) explain how a waiver of those laws, regulations, or policies will permit the local unit to reach its local goals.

~~(c) Development by each school of a differentiated pay plan for that school; development by the local board of education of a differentiated pay plan for central office personnel. --~~

~~(1) The local school administrative unit shall consider a plan for differentiated pay. The local plan shall include a plan for differentiated pay, in accordance with G.S. 115C-238.4, unless the local school administrative unit elects not to participate in any differentiated pay plan.~~

~~(2) The principal of each school, representatives of the building-level staff, and parents of children enrolled in the school shall develop a building-level differentiated pay plan for the school when they develop their building-level plan to address student performance goals appropriate to the school. By October 1 of each year, the principal shall disclose to all affected personnel the total allocation of funds for differentiated pay. At the end of the fiscal year, the principal shall make available to all affected personnel a report of all disbursement from the building-level differentiated pay plan.~~

~~Support among affected staff members is essential to successful implementation of a building-level differentiated pay plan; therefore, the principal of the school shall present the proposed building-level plan to all of the staff assigned to the school building for their review and vote. The vote shall be by secret ballot. The principal may submit the building-level differentiated pay plan to the local board of education only if the proposed building-level differentiated pay plan has the approval of a majority of the staff who voted on the plan.~~

~~The local board of education shall accept or reject the building-level differentiated pay plan. The local board shall not make any substantive changes in any building-level plan that it accepts; the local board shall set out any building-level plan that it accepts in the systemwide differentiated pay plan. If the local board rejects a building-level plan, the local board shall state with specificity its reasons for rejecting the plan; the principal of the school for which the plan was rejected, representatives of the building-level staff, and parents of children enrolled in the school may then prepare another plan, present it to all of the staff eligible to receive differentiated pay, in accordance with G.S. 115C-238.4(a), for a vote, and submit it to the local board for inclusion in the systemwide plan. If no building-level plan is accepted for a school before March 15 of the fiscal year preceding the fiscal year in which participation is sought, the local board may develop a plan for the school building for inclusion in the systemwide plan; the General Assembly urges the local board to utilize the proposed building-level plan to the maximum extent possible when developing such a plan.~~

~~(3) The local board of education shall develop a plan for differentiated pay for all classes of personnel assigned to the central office that the local board determines are participants in the development or implementation of the local school improvement plan, and shall include the plan in the systemwide differentiated pay plan.~~

~~(4) A systemwide differentiated pay plan shall remain in effect for no more than three years. At the end of three years, a plan to continue, discontinue, or modify that differentiated pay plan shall be developed in accordance with subdivisions (2) and (3) of this subsection.~~

(d) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 75.1(b)."

Sec. 4. G.S. 115C-238.6 reads as rewritten:

"§ 115C-238.6. Approval of local school administrative unit plans by the State Superintendent; conditions for continued participation.

(a) Prior to June 30 each year, the State Superintendent shall review local school improvement plans submitted by the local school administrative units in accordance with policies and ~~performance indicators~~ standards adopted by the State Board of ~~Education.~~ Education and shall recommend to the State Board of Education whether the plan should be approved. If the State ~~Superintendent~~ Board of Education approves the plan for a local school administrative unit, that unit shall participate in the Program for the next fiscal year.

If a local plan contains a request for a waiver of State laws, regulations, or policies, in accordance with G.S. 115C-238.3(b1) or (b2), the State Superintendent shall ~~determine~~ consider and recommend to the State Board whether and to what extent the identified laws, regulations, or policies should be waived. ~~The State Superintendent shall present that plan and his determination to the State Board of Education.~~ If the State Board of Education deems it necessary to do so to enable a local unit to reach its local accountability goals, the State ~~Board, only upon the recommendation of the State Superintendent,~~ Board may grant waivers of:

(1) State laws pertaining to class size, teacher certification, assignment of teacher assistants, the use of State-adopted textbooks, and the purposes for which State funds for the public ~~schools, except for funds for school health coordinators,~~ schools may be ~~used; Provided, however, the State Board of Education shall not permit the use of funds for teachers for expanded programs under the Basic Education Program for any other purpose;~~ used;

(2) All State regulations and policies, except those pertaining to State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-325, health and safety codes, compulsory school attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System.

The provisions of G.S. 115C-12(16)b. regarding the placement of State-allotted office support personnel, teacher assistants, and custodial personnel on the salary schedule adopted by the State Board shall not be waived.

Except for waivers requested by the local board in accordance with G.S. 115C-238.3(b2) for central office staff, waivers shall be granted only for the specific schools for which they are requested in building-level plans and shall be used only under the specific circumstances for which they are requested.

(b) Local school administrative units shall continue to participate in the Program ~~and receive funds for differentiated pay, if their local plans call for differentiated pay,~~ so long as (i) they demonstrate satisfactory progress toward school and student performance goals set out in their local school improvement plans; or (ii) once their local goals are met, they continue to achieve their local goals and they otherwise demonstrate satisfactory performance, as determined by the State Superintendent in accordance with guidelines set by the State Board of Education.

~~If the local school administrative units do not achieve their goals after two years, the Department of Public Instruction shall provide them with technical assistance to help them meet their goals. If after one additional year they do not achieve their goals, the State Board of Education shall decide what steps shall be taken to improve the education of students in the unit.~~"

Sec. 5. This act becomes effective July 1, 1995, and applies to plans in effect for school years beginning with the 1995-96 school year: Provided, however, a local board is not required to adopt a new plan in accordance with the amendments to G.S. 115C-238.1 set out in Section 1 of this act prior to the 1996-97 school year.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

S.B. 708 **CHAPTER 273**

AN ACT REGARDING THE PROCEDURE FOR LETTING PUBLIC CONTRACTS BY THE CITY OF CHARLOTTE AND TO PROHIBIT THE UNAUTHORIZED REMOVAL OR DESTRUCTION OF CAMPAIGN SIGNS IN MECKLENBURG COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-129(a) reads as rewritten:

"(a) No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ~~twenty thousand dollars ($20,000),~~ one hundred thousand dollars ($100,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of

the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131."

Sec. 2. Section 1 of this act applies to the City of Charlotte only.

Sec. 3. Any person who removes or destroys a campaign sign earlier than four days after the election to which the sign is relevant without the authorization of the person who placed the sign or of the candidate, political committee, or referendum committee whose cause the sign promotes shall be guilty of a Class 2 misdemeanor and be punishable by a fine of two hundred fifty dollars ($250.00) for each sign removed or destroyed, not to exceed two thousand five hundred dollars ($2,500). This section does not apply to any government official enforcing a State law or local ordinance, to a public utility company removing a sign from its utility pole, or to the owner of the property on which the sign is placed. This section applies to Mecklenburg County only.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

S.B. 999 **CHAPTER 274**

AN ACT TO INCREASE THE COST LIMIT ON WORK THAT CAN BE PERFORMED BY GOVERNMENTAL FORCE ACCOUNT LABOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-135 reads as rewritten:

"*§ 143-135. Limitation of application of Article.*

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed ~~seventy-five thousand dollars ($75,000). Such~~ one hundred twenty-five thousand dollars ($125,000) or the total cost of labor on the project does not exceed fifty thousand dollars ($50,000). This force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work,

including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article."

Sec. 2. Section 1 of Chapter 219 of the 1995 Session Laws is repealed.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

H.B. 265 **CHAPTER 275**

AN ACT TO ALLOW SERVICE OF PROCESS BY A PRIVATE PROCESS SERVER WHEN A PROPER OFFICER RETURNS SERVICE OF PROCESS UNEXECUTED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 4, is amended by adding a new subsection (h1) to read:

"(h1) Summons -- When process returned unexecuted. -- If a proper officer returns a summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to be made by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made. This subsection shall not apply to executions pursuant to Article 28 of Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes."

Sec. 2. G.S. 7A-305(d) reads as rewritten:

"(d) The following expenses, when incurred, are also assessable or recoverable, as the case may be:

(1) Witness fees, as provided by law.
(2) Jail fees, as provided by law.
(3) Counsel fees, as provided by law.
(4) Expense of service of process by certified mail and by publication.
(5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of testimony, if any, insofar as essential to the appeal.
(6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server may be recoverable in an amount equal to the actual cost of such service or fifty dollars ($50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.
(7) Fees of guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall

include reasonable reimbursement for stenographic assistance, when necessary.

(8) Fees of interpreters, when authorized and approved by the court.

(9) Premiums for surety bonds for prosecution, as authorized by G.S. 1-109."

Sec. 3. This act becomes effective October 1, 1995, and applies to actions that are filed or have not reached final judgment on or after that date.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

H.B. 336 **CHAPTER 276**

AN ACT TO ALLOW TRAINERS OF ASSISTANCE DOGS TO BE ACCOMPANIED BY AN ASSISTANCE DOG DURING TRAINING SESSIONS WHEN USING PLACES OF PUBLIC ACCOMMODATION OR COMMON CARRIERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 168-4.2 reads as rewritten:

"*§ 168-4.2. May be accompanied by assistance dog.*

Every mobility impaired person, as defined in this section, visually impaired person, as broadly defined to include visual disability, or hearing impaired person, as defined in G.S. 8B-1(2), has the right to be accompanied by an assistance dog especially trained for the purpose of providing assistance to a person with the same impairing condition as the person wishing to be accompanied, in any of the places listed in G.S. 168-3, and has the right to keep the assistance dog on any premises the person leases, rents, or uses. The person qualifies for these rights upon the showing of a tag, issued by the Department of Human Resources, pursuant to G.S. 168-4.3, stamped 'NORTH CAROLINA ASSISTANCE DOG PERMANENT REGISTRATION' and stamped with a registration number, or upon a showing that the dog is being trained or has been trained as an assistance dog. An assistance dog may accompany a person in any of the places listed in G.S. 168-3 but may not occupy a seat in any of these places. The trainer of the assistance dog may be accompanied by the dog during training sessions in any of the places listed in G.S. 168-3.

A mobility impaired person is a person with a physiological deficiency, regardless of its cause, nature, or extent, that renders the individual unable to move about without the aid of crutches, a wheelchair, or other form of support, or that limits the person's functional ability to ambulate, climb, descend, sit, rise, or perform any other related function."

Sec. 2. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

H.B. 350 CHAPTER 277

AN ACT TO REQUIRE THE REQUESTING AGENCY TO COMPENSATE THE INTERPRETERS FOR THE DEAF IN CERTAIN JUDICIAL, LEGISLATIVE, AND ADMINISTRATIVE PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 8B-8 reads as rewritten:

"*§ 8B-8. Compensation.*

(a) An interpreter appointed under this Chapter is entitled to a reasonable fee for ~~his~~ services, including waiting time, time reserved by the courts for the assignment, and reimbursement for necessary travel and subsistence expenses. The fee shall be fixed by the appointing authority who shall consider any fee schedule for interpreters ~~recommended~~ established by the Department of Human Resources. Reimbursement for necessary travel and subsistence expenses shall be at rates provided by law for State employees generally.

(b) The fees and expenses of interpreters who serve before any superior or district court criminal and juvenile proceeding are payable from funds appropriated to the Administrative Office of the Courts.

(c) The fees and expenses of interpreters who serve in civil cases and special proceedings are also payable from funds appropriated to the Administrative Office of the Courts.

(d) Fees and expenses of interpreters who serve before a legislative body described in this Article are payable from funds appropriated for operating expenses of the General Assembly.

(e) Fees and expenses of interpreters who serve before any State administrative agency are payable by that agency. ~~The agency shall, upon application to the Department of Human Resources be reimbursed for payments made.~~

(f) Fees and expenses of interpreters who serve before city or county administrative proceedings are payable by the respective city or county. ~~During the fiscal biennium 1981-83, the city or county shall, upon application to the Department of Administration, be reimbursed for payments made.~~

~~(g) The Department of Administration and the Office of State Budget and Management shall report to the 1983 General Assembly on the satisfactoriness of the funding of this act by special reserve funds and shall recommend whether this funding be continued and new appropriations made or whether continued reserve funding is unnecessary.~~"

Sec. 2. This act becomes effective July 1, 1995, and applies to compensation for services performed on or after that date.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

H.B. 448 CHAPTER 278

AN ACT TO PROVIDE THAT ELIGIBILITY FOR COVERAGE OF CERTAIN EMPLOYEES UNDER THE NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN IS BASED UPON RETIREMENT MEMBERSHIP SERVICE, WHICH MAY BE EARNED AFTER THE DISABILITY BEGAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-40.2(d) reads as rewritten:

"(d) Former employees who are receiving disability retirement benefits or disability income benefits pursuant to Article 6 of Chapter 135 of the General Statutes, provided the former employee has at least five years of retirement membership ~~service at the time of disability,~~ service, shall be eligible for the benefit provisions of this Plan, as set forth in this Part, on the same basis as a retired employee. Such coverage shall terminate as of the end of the month in which such former employee is no longer eligible for disability retirement benefits or disability income benefits pursuant to Article 6 of this Chapter."

Sec. 2. G.S. 135-40.11(c) reads as rewritten:

"(c) Termination of employment shall mean termination for any reason, including layoff and leave of absence, except as provided in (a)(1) and (2) of this section, but shall not, for purposes of this Plan, include retirement upon which the employee is granted an immediate service or disability pension under and pursuant to a State-supported Retirement System.

(1) In the event of termination for any reason other than death, coverage under the Plan for an employee and his or her eligible spouse or dependent children, provided the eligible spouse or dependent children were covered under the Plan at termination of employment or were covered on September 30, 1986, may be continued for a period of not more than 18 months following termination of employment on a fully contributory basis.

(2) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1020, s. 29(r).

(3) In the event of approved leave of absence without pay, other than for active duty in the armed forces of the United States, coverage under this Plan for an employee and his or her dependents may be continued during the period of such leave of absence by the employee's paying one hundred percent (100%) of the cost.

(4) If employment is terminated in the second half of a calendar month and the covered individual has made the required contribution for any coverage in the following month, that coverage will be continued to the end of the calendar month following the month in which employment was terminated.

(5) Employees paid for less than 12 months in a year, who are terminated at the end of the work year and who have made contributions for the non-work months, will continue to be covered to the end of the period for which they have made contributions,

with the understanding that if they are not employed by another State-covered employer under this Plan at the beginning of the next work year, the employee will refund to the ex-employer the amount of the employer's cost paid for them during the non-paycheck months.

(6) Any employee receiving benefits pursuant to Article 6 of this Chapter when the employee has less than five years of retirement membership ~~service at the time of disability,~~ service, or an employee on leave of absence without pay due to illness or injury for up to 12 months, is entitled to continued coverage under the Plan for the employee and any eligible dependents by the employee's paying one hundred percent (100%) of the cost."

Sec. 3. This act is effective upon ratification and applies to disabled former employees who have at least five years of retirement membership service on or after that date.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

H.B. 663 **CHAPTER 279**

AN ACT TO ESTABLISH A SEASON FOR TRAPPING FOXES IN HALIFAX COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other law, there is an open season for taking foxes by trapping from January 7 through February 10 of each year.

Sec. 2. The Wildlife Resources Commission shall provide for the sale of foxes taken lawfully under this act.

Sec. 3. A bag limit of 30 applies in the aggregate to all foxes taken during the fox season established in this act.

Sec. 4. This section applies only to Halifax County.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

H.B. 756 **CHAPTER 280**

AN ACT TO AID IN ENSURING THAT RESIDENTS IN DOMICILIARY CARE HOMES ARE IN SAFE AND WELL-MANAGED FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-2 reads as rewritten:

"*§ 131D-2. Licensing of domiciliary homes for the aged and disabled.*

(a) The following definitions will apply in the interpretation of this section:

(1) 'Abuse' means the willful or grossly negligent infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the

administrator or staff of a domiciliary home of services which are necessary to maintain mental and physical health.

(1a) 'Administrator' means a person approved by the Department of Human Resources who has the responsibility for the total operation of a licensed domiciliary home.

(2) 'Developmentally disabled adult' means a person who has attained the age of 18 years and who has a developmental disability defined as a severe, chronic disability of a person which:

a. Is attributed to a mental or physical impairment or combination of mental and physical impairments;
b. Is manifested before the person attains age 22;
c. Is likely to continue indefinitely;
d. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
e. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(3) 'Domiciliary home' means any facility, by whatever name it is called, which provides residential care for aged or disabled persons whose principal need is a home which provides the supervision and personal care appropriate to their age or disability. Medical care at a domiciliary home is only occasional or incidental, such as may be given in the home of any individual or family, but medication is administered by designated staff of the home. Personal care given in a domiciliary home includes direct assistance, by designated staff, to residents in personal grooming, bathing, dressing, feeding, shopping, laundering clothes, handling personal finances, arranging transportation, scheduling medical or business appointments, as well as attending to any personal needs residents may be incapable of or unable to attend for themselves. Domiciliary homes are to be distinguished from nursing homes subject to licensure under G.S. 131E-102. The three types of domiciliary homes are homes for the aged and disabled, family care homes and group homes for developmentally disabled adults.

(4) 'Exploitation' means the illegal or improper use of an aged or disabled resident or his resources for another's profit or advantage.

(5) 'Family care home' means a domiciliary home having two to six residents. The structure of a family care home may be no more than two stories high and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct exterior ground-level accesses to the upper story.

(6) 'Group home for developmentally disabled adults' means a domiciliary home which has two to nine developmentally disabled adult residents.

(7) 'Home for the aged and disabled' means a domiciliary home which has seven or more residents.

(8) 'Neglect' means the failure to provide the services necessary to maintain a resident's physical or mental health.

(b) Licensure; inspections. --

(1) The Department of Human Resources shall inspect and license, under rules adopted by the Social Services Commission, all domiciliary homes for persons who are aged or mentally or physically disabled except those exempt in subsection (d) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary of Human Resources for failure to comply with any part of this section or any rules adopted hereunder. No new license shall be issued for any domiciliary home whose administrator was the administrator for any domiciliary home that had its license revoked until one full year after the date of revocation. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. A license shall not be renewed if outstanding fines and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may by rule require. The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Social Services Commission, for substantial failure to comply with the provisions of this section or rules promulgated pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license.

(1a) In addition to the licensing and inspection requirements mandated by subdivision (1) of this subsection, the Department shall ensure that domiciliary care facilities required to be licensed by this Article are monitored for licensure compliance on a regular basis. In carrying out this requirement, the Department shall work with county departments of social services to do the routine monitoring and to have the Division of Facility Services oversee this monitoring and perform any follow-up inspection called for. The Department shall also keep an up-to-date directory of all persons who are administrators as defined in subdivision (1a) of subsection (a) of this section.

(2) Any individual or corporation that establishes, conducts, manages, or operates a facility subject to licensure under this section without a license is guilty of a Class 3 misdemeanor, and upon conviction shall be punishable only by a fine of not more than fifty dollars ($50.00) for the first offense and not more than five hundred dollars ($500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

(3) In addition, the Department may summarily suspend a license pursuant to G.S. 150B-3(c) whenever it finds substantial evidence of abuse, neglect, exploitation or any condition which presents an imminent danger to the health and safety of any resident of the home. Any facility wishing to contest summary suspension of a license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20 days after the Department mails a notice of summary suspension to the licensee.

(4) Notwithstanding G.S. 8-53 or any other law relating to confidentiality of communications between physician and patient, in the course of an inspection conducted under subsection (b):

a. Department representatives may review any writing or other record concerning the admission, discharge, medication, care, medical condition, or history of any person who is or has been a resident of the facility being inspected, and

b. Any person involved in giving care or treatment at or through the facility may disclose information to Department representatives;

unless the resident objects in writing to review of his records or disclosure of such information.

The facility, its employees and any other person interviewed in the course of an inspection shall be immune from liability for damages resulting from disclosure of any information to the Department.

The Department shall not disclose:

a. Any confidential or privileged information obtained under this subsection unless the resident or his legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure, or

b. The name of anyone who has furnished information concerning a facility without that person's consent.

The Department shall institute appropriate policies and procedures to ensure that unauthorized disclosure does not occur. All confidential or privileged information obtained under this section and the names of persons providing such information shall be exempt from Chapter 132 of the General Statutes.

(5) Notwithstanding any law to the contrary, Chapter 132 of the General Statutes, the Public Records Law, applies to all records of the State Division of Social Services of the Department of

Human Resources and of any county department of social services regarding inspections of domiciliary care facilities except for information in the records that is confidential or privileged, including medical records, or that contains the names of residents or complainants.

(c) The following facilities are exempt from this section and shall not be required to obtain a license hereunder:

(1) Those which care for one person only;

(2) Those which care for two or more persons, all of whom are related or connected by blood or by marriage to the operator of the facility;

(3) Those which make no charges for care, either directly or indirectly;

(4) Those which care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration.

(d) This section does not apply to any institution which is established, maintained or operated by any unit of government, by any commercial inn or hotel, or to any facility licensed by the Medical Care Commission under the provisions of G.S. 131E-102, entitled 'Licensure requirements.' If any nursing home licensed under G.S. 131E-102 also functions as a domiciliary home, then the domiciliary home component must comply with rules adopted by the Medical Care Commission.

(e) The Department of Human Resources shall provide the method of evaluation of residents in domiciliary homes in order to determine when any of those residents are in need of the professional medical and nursing care provided in licensed nursing homes.

(f) If any provisions of this section or the application of it to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(g) In order for a domiciliary home to maintain its license, it shall not hinder or interfere with the proper performance of duty of a lawfully appointed community advisory committee, as defined by G.S. 131D-31 and G.S. 131D-32.

(h) Suspension of admissions to domiciliary home:

(1) In addition to the administrative penalties described in subsection (b), the Secretary may suspend the admission of any new residents to a domiciliary home, where the conditions of the domiciliary home are detrimental to the health or safety of the residents. This suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removing the suspension.

(2) In imposing a suspension under this subsection, the Secretary shall consider the following factors:

a. The degree of sanctions necessary to ensure compliance with this section and rules adopted hereunder; and

b. The character and degree of impact of the conditions at the home on the health or safety of its residents.

(3) The Secretary of Human Resources shall adopt rules to implement this subsection.

(4) Any facility wishing to contest a suspension of admissions shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20 days after the Department mails a notice of suspension of admissions to the licensee.

(i) Notwithstanding the existence or pursuit of any other remedy, the Department of Human Resources may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of a domiciliary home without a license. Such action shall be instituted in the superior court of the county in which any unlicensed activity has occurred or is occurring.

If any person shall hinder the proper performance of duty of the Secretary or his representative in carrying out this section, the Secretary may institute an action in the superior court of the county in which the hindrance has occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

Actions under this subsection shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure."

Sec. 2. This act becomes effective October 1, 1995, and applies to revocations and records of inspections made on or after that date.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

S.B. 287 **CHAPTER 281**

AN ACT TO CREATE OFFENSES OF STATUTORY RAPE AND STATUTORY SEXUAL OFFENSE AGAINST VICTIMS WHO ARE THIRTEEN, FOURTEEN, OR FIFTEEN YEARS OLD.

The General Assembly of North Carolina enacts:

Section 1. Article 7A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"*§ 14-27.7A. Statutory rape or sexual offense of person who is 13, 14, or 15 years old.*

(a) A defendant is guilty of a Class B1 felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person, except when the defendant is lawfully married to the person.

(b) A defendant is guilty of a Class C felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is more than four but less than six years older

than the person, except when the defendant is lawfully married to the person."

Sec. 2. This act becomes effective December 1, 1995, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

S.B. 714 **CHAPTER 282**

AN ACT AMENDING THE CHARTER OF THE CITY OF DURHAM RELATING TO NOTIFICATION REQUIREMENTS FOR REZONING ANNEXED PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended, is hereby further amended by designating the existing language in Section 94 as subsection (a) and by adding to Section 94 the following subsection (b):

"(b) In lieu of complying with G.S. 160A-384, when property annexed by the City is proposed to be zoned to the same zone classification the property held when in the County, the City shall either give individual mailed notice to the property owner under G.S. 160A-384(a) or shall publish notice under G.S. 160A-364."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

H.B. 328 **CHAPTER 283**

AN ACT TO INCREASE THE PENALTIES FOR FAILURE TO GIVE WAY TO AN OVERTAKING VEHICLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-149(b) reads as rewritten:

"(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle while being lawfully overtaken on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

Failure to comply with this subsection:

(1) Is a Class 1 misdemeanor when the failure is the proximate cause of a collision resulting in serious bodily injury.

(2) Is a Class 2 misdemeanor when the failure is the proximate cause of a collision resulting in bodily injury or property damage.

(3) Is, in all other cases, an infraction."

Sec. 2. G.S. 20-151 is repealed.

Sec. 3. This act becomes effective December 1, 1995.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

H.B. 340 CHAPTER 284

AN ACT TO PROVIDE THAT AN INDIVIDUAL WHO IS UNABLE TO PASS A CONTROLLED SUBSTANCE EXAMINATION IS INELIGIBLE FOR UNEMPLOYMENT BENEFITS UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-13(a)(3) reads as rewritten:

"(3) ~~He~~ The individual is able to work, and is available for work: Provided that, unless temporarily excused by Commission regulations, no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of unemployment due to a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For purposes of this subdivision, no individual shall be deemed available for work during any week that the individual tests positive for a controlled substance if (i) the test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes, (ii) the test is required as a condition of hire for a job, and (iii) the job would be suitable work for the claimant. The employer shall report to the Commission, in accordance with regulations adopted by the Commission, each claimant that tests positive for a controlled substance under this subdivision. For the purposes of this subdivision, no individual shall be deemed available for work during any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance, or on vacation between yearly terms of such school attendance. Except: (i) Any person who was engaged in full-time employment concurrent with his school attendance, who is otherwise eligible, shall not be denied benefits because of school enrollment and attendance.

Except: (ii) Any otherwise qualified unemployed individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall be deemed available for work. However, any unemployment insurance benefits payable with respect to any week for which a training allowance is payable pursuant to the provisions of a federal or State law, shall be reduced by the amount of such allowance which weekly benefit amount shall be rounded to the nearest lower full dollar amount (if not a full dollar amount). The Commission may approve such training course for an individual only if:

1. a. Reasonable employment opportunities for which the individual is fitted by training and experience do not exist in the locality or are severely curtailed;
   b. The training course relates to an occupation or skill for which there are expected to be reasonable opportunities for employment; and
   c. The individual, within the judgment of the Commission, has the required qualifications and the aptitude to complete the course successfully; or,
2. Such approval is required for the Commission to receive the benefits of federal law."

Sec. 2. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

H.B. 912 **CHAPTER 285**

AN ACT TO AMEND ARTICLE 11 OF CHAPTER 130A OF THE GENERAL STATUTES REGARDING WASTEWATER SYSTEMS.

The General Assembly of North Carolina enacts:

Section 1. Article 11 of Chapter 130A of the General Statutes reads as rewritten:

"ARTICLE 11.

"Wastewater Systems.

"§ *130A-333. Purpose.*

The General Assembly finds and declares that continued installation, at a rapidly and constantly accelerating rate, of septic tank systems and other types of wastewater systems in a faulty or improper manner and in areas where unsuitable soil and population density adversely affect the efficiency and functioning of these systems, has a detrimental effect on the public health and environment through contamination of land, groundwater and surface waters. Recognizing, however, that wastewater can be rendered ecologically safe and the public health protected if methods of wastewater collection, treatment and disposal are properly regulated and recognizing that wastewater collection, treatment and disposal will continue to be necessary to meet the needs of an expanding population, the General Assembly intends to ensure the regulation of wastewater collection, treatment and disposal

systems so that these systems may continue to be used, where appropriate, without jeopardizing the public health.

"§ *130A-334. Definitions.*

The following definitions shall apply throughout this Article:

(1) 'Construction' means any work at the site of placement done for the purpose of preparing a residence, place of business or place of public assembly for initial occupancy, or subsequent additions or modifications which increase sewage flow.

(2) Repealed by Session Laws 1985, c. 462, s. 18.

(2a) 'Industrial process wastewater' means any water-carried waste resulting from any process of industry, manufacture, trade, or business.

(3) 'Location' means the initial placement for occupancy of a residence, place of business or place of public assembly.

(3a) 'Maintenance' means normal or routine maintenance including replacement of broken pipes, cleaning, or adjustment to an existing wastewater system.

(4), (5) Repealed by Session Laws 1985, c. 462, s. 18.

(6) 'Place of business' means a store, warehouse, manufacturing establishment, place of amusement or recreation, service station, office building or any other place where people work.

(7) 'Place of public assembly' means a fairground, auditorium, stadium, church, campground, theater or any other place where people assemble.

(7a) 'Pretreatment' means any biological, chemical, or physical process or system for improving wastewater quality and reducing wastewater constituents prior to final treatment and disposal in a subsurface wastewater system and includes, but is not limited to aeration, clarification, digestion, disinfection, filtration, separation, and settling.

(8) 'Public or community wastewater system' means a single system of wastewater collection, treatment and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality or a public utility.

(9) 'Relocation' means the displacement of a residence or place of business from one site to another.

(9a) 'Repair' means the extension, alteration, replacement, or relocation of existing components of a wastewater system.

(10) 'Residence' means a private home, dwelling unit in a multiple family structure, hotel, motel, summer camp, labor work camp, manufactured home, institution or any other place where people reside.

(11) Repealed by Session Laws 1992, c. 944, s. 3, effective July 14, 1992.

(12) 'Septic tank system' means a subsurface wastewater system consisting of a settling tank and a subsurface disposal field.

(13) 'Sewage' means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including

those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.

(14) 'Wastewater' means any sewage or industrial process wastewater discharged, transmitted, or collected from a residence, place of business, place of public assembly, or other places into a wastewater system.

(15) 'Wastewater system' means a system of wastewater collection, treatment, and ~~disposal,~~ disposal in single or multiple components, including a privy, septic tank system, public or community wastewater system, wastewater reuse or recycle system, mechanical or biological wastewater treatment system, any other similar system, and any chemical toilet used only for human waste.

"§ 130A-335. Wastewater collection, treatment and disposal; rules.

(a) A person owning or controlling a residence, place of business or a place of public assembly shall provide ~~a~~ an approved wastewater system. A wastewater system may include components for collection, treatment and disposal of wastewater.

(b) All wastewater systems shall be regulated by the Department under rules adopted by the Commission except for the following wastewater systems that shall be regulated by the Department under rules adopted by the Environmental Management Commission:

(1) Wastewater collection, treatment, and disposal systems designed to discharge effluent to the land surface or surface waters.

(2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.

(3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.

(c) A wastewater system subject to approval under rules of the Commission shall be reviewed and approved under rules of a local board of health in the following circumstances:

(1) The local board of health, on its own motion, has requested the Department to review its proposed rules concerning wastewater systems; and

(2) The local board of health has adopted by reference the wastewater system rules adopted by the Commission, with any more stringent modifications or additions deemed necessary by the local board of health to protect the public health; and

(3) The Department has found that the rules of the local board of health concerning wastewater collection, treatment and disposal systems are at least as stringent as rules adopted by the Commission and are sufficient and necessary to safeguard the public health.

(d) The Department may, upon its own motion, upon the request of a local board of health or upon the request of a citizen of an affected county, review its findings under subsection (c) of this section.

The Department shall review its findings under subsection (c) of this section upon modification by the Commission of the rules applicable to

wastewater systems. The Department may deny, suspend, or revoke the approval of local board of health wastewater system rules upon a finding that the local wastewater rules are not as stringent as rules adopted by the Commission, are not sufficient and necessary to safeguard the public health, or are not being enforced. Suspension and revocation of approval shall be in accordance with G.S. 130A-23.

(e) The rules of the Commission and the rules of the local board of health shall address at least the following: Wastewater characteristics; Design unit; Design capacity; Design volume; Criteria for the design, installation, operation, maintenance and performance of wastewater collection, treatment and disposal systems; Soil morphology and drainage; Topography and landscape position; Depth to seasonally high water table, rock and water impeding formations; Proximity to water supply wells, shellfish waters, estuaries, marshes, wetlands, areas subject to frequent flooding, streams, lakes, swamps and other bodies of surface or groundwaters; Density of wastewater collection, treatment and disposal systems in a geographical area; Requirements for issuance, suspension and revocation of permits; and Other factors which affect the effective operation and performance of wastewater collection, treatment and disposal systems. The rules regarding required design capacity and required design volume for wastewater systems shall provide that exceptions may be granted upon a showing that a system is adequate to meet actual daily water consumption.

(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, including pretreatment and system control requirements, standards for ~~operation~~ operation, maintenance, monitoring, reporting, and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The Department and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the rules or this Article. The permits shall be valid for a period prescribed by the rules, except that improvement permits shall be valid ~~for a period of five years, and may be renewed~~ without expiration upon a showing satisfactory to the Department or the local health department that the ~~system is in compliance with the current rules and this Article,~~ site and soil conditions are unaltered, that the facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the improvement permit was issued. ~~The period of time for which the permit is valid and a~~ A statement shall be displayed prominently on both the application form for the permit and the permit that states that the permit is subject to revocation if site plans or the intended use ~~change~~ change. ~~shall be displayed prominently on both the application form for the permit and the permit.~~

(f1) A preconstruction conference with the owner or developer, or an agent of the owner or developer, and a representative of the local health

department shall be required for any authorization for wastewater system construction issued with an improvement permit under G.S. 130-336 when the authorization is greater than five years old. Following the conference, the local health department shall issue a revised authorization for wastewater system construction that includes current technology that can reasonably be expected to improve the performance of the system.

(g) Prior to denial of an improvement permit, the local health department shall advise the applicant of possible site modifications or alternative systems, and shall provide a brief description of those systems. When an improvement permit is denied, the local health department shall issue the site evaluation in writing stating the reasons for the unsuitable classification. The evaluation shall also inform the applicant of the right to an informal review by the Department, the right to appeal under G.S. 130A-24, and to have the appeal held in the county in which the site for which the improvement permit was requested is located.

(h) Except as provided in this subsection, a chemical or portable toilet may be placed at any location where the chemical or portable toilet can be operated and maintained under sanitary conditions. A chemical or portable toilet shall not be used as a replacement or substitute for a water closet or urinal where a water closet or urinal connected to a permanent wastewater treatment system is required by the North Carolina State Building Code, except that a chemical or portable toilet may be used to supplement a water closet or urinal during periods of peak use. A chemical or portable toilet shall not be used as an alternative to the repair of a water closet, urinal, or wastewater treatment system. It shall be unlawful to discharge sewage or other waste from a chemical or portable toilet used for human waste except into a wastewater system that has been approved by the Department under rules adopted by the Commission or by the Environmental Management Commission or at a site that is permitted by the Department under G.S. 130A-291.1.

"*§ 130A-336. Improvement permit and authorization for wastewater system construction required.*

(a) Any proposed site for a residence, place of business, or place of public assembly in an area not served by an approved wastewater system shall be evaluated by the local health department in accordance with rules adopted pursuant to this Article. An improvement permit issued in compliance with the rules adopted pursuant to this Article shall include: a description of the facility the proposed site is to serve; the proposed wastewater system; the design wastewater flow and characteristics; a plat of the property showing the specific location of the facility, the site for the proposed wastewater system, property lines, water supplies, surface waters; the conditions for any site modifications; and any other information required by the rules of the Commission. The improvement permit shall not be affected by change in ownership of the site for the wastewater system provided both the site for the wastewater system and the facility the system serves are unchanged and remain under the ownership or control of the person owning the facility. No person shall commence or assist in the construction, location, or relocation of a residence, place of business, or place of public assembly in an area not served by an approved wastewater

system unless an improvement permit and an authorization for wastewater system construction are ~~is~~ obtained from the local health department. This requirement shall not apply to a manufactured residence exhibited for sale or stored for later sale and intended to be located at another site after sale.

(b) The local health department shall issue an ~~improvement permit~~ authorization for wastewater system construction authorizing work to proceed and the installation or repair of a wastewater system when it has determined after a field investigation that the system can be installed and operated in compliance with this Article and rules adopted pursuant to this Article. This authorization for wastewater system construction shall be valid for a period of five years and may be issued at the same time the improvement permit is issued. No person shall commence or assist in the installation, construction, or repair of a wastewater system unless an improvement permit and an authorization for wastewater system construction have ~~has~~ been obtained from the Department or the local health department. No improvement permit or authorization for wastewater system construction shall be required for maintenance of a wastewater system. The Department and the local health department may impose conditions on the issuance of an improvement ~~permit.~~ permit and an authorization for wastewater system construction.

(c) Unless the Commission otherwise provides by rule, plans, and specifications for all wastewater systems designed for the collection, treatment, and disposal of industrial process wastewater shall be reviewed and approved by the Department prior to the issuance of an ~~improvement permit~~ authorization for wastewater system construction by the local health department.

"§ 130A-337. Inspection; operation permit ~~or certificate of completion~~ required.

(a) No system of wastewater collection, treatment and disposal shall be covered or placed into use by any person until an inspection by the local health department has determined that the system has been installed or repaired in accordance with any conditions of the improvement permit, the ~~rules~~ rules, and this Article.

(b) Upon determining that the system is properly installed or repaired and that the system is capable of being operated in accordance with the conditions of the improvement permit, the rules, this Article and any conditions to be imposed in the operation permit, as applicable, the local health department shall issue an operation permit authorizing the residence, place of business or place of public assembly to be occupied and for the system to be placed into ~~use,~~ use or reuse. ~~However, if the system is limited to a single septic tank system without a pump or other appurtenances serving a single one-family dwelling, then a certificate of completion shall be issued instead of an operation permit; also, if the system is limited to a single septic tank system without a pump or other appurtenances serving a single residence other than a one-family dwelling, or serving a place of business or a place of public assembly and having a design daily flow of not more than 480 gallons, then a certificate of completion shall be issued instead of an operation permit. A certificate of completion shall be issued when the septic tank system is properly installed or repaired and is capable~~

~~of being operated in accordance with the conditions of the improvement permit, the rules and this Article.~~

(c) Upon determination that an existing wastewater system has a valid operation permit ~~or a valid certificate of completion~~ and is operating properly in a manufactured home park, the local health department shall issue authorization in writing for a manufactured home to be connected to the existing system and to be occupied. Notwithstanding G.S. 130A-336, an improvement permit is not required for the connection of a manufactured home to an existing system with a valid operation permit ~~or a valid certificate of completion~~ in a manufactured home park.

(d) No person shall occupy a residence, place of business or place of public assembly, or place a wastewater system into use or reuse for a residence, place of business or place of public assembly until an operation permit ~~or a certificate of completion~~ has been issued or authorization has been obtained pursuant to G.S. 130A-337(c).

"§ 130A-338. ~~Improvement permit or authorization~~ Authorization for wastewater system construction required before other permits to be issued.

Where construction, location or relocation is proposed to be done upon a residence, place of business or place of public assembly, no permit required for electrical, plumbing, heating, air conditioning or other construction, location or relocation activity under any provision of general or special law shall be issued until an ~~improvement permit~~ authorization for wastewater system construction has been issued under G.S. 130A-336 or authorization has been obtained under G.S. 130A-337(c).

"§ 130A-339. Limitation on electrical service.

No person shall allow permanent electrical service to a residence, place of business or place of public assembly upon construction, location or relocation until the official electrical inspector with jurisdiction as provided in G.S. 143-143.2 certifies to the electrical supplier that the required improvement permit authorization for wastewater system construction and an operation ~~permit, a certificate of completion~~ permit or authorization under G.S. 130A-337(c) has been obtained. Temporary electrical service necessary for constructing a residence, place of business or place of public assembly can be provided upon compliance with G.S. 130A-338.

"§ 130A-340. Review procedures and appeals.

The Department, upon request by an applicant for an improvement permit, shall provide a technical review of any scientific data and system design submitted by the applicant. The data and system design shall be evaluated by professional peers of those who prepared the data and system design. The results of the technical review shall be available prior to a decision by the local health department and shall not affect an applicant's right to a contested hearing under Chapter 150B of the General Statutes.

"§ 130A-341. Consideration of a site with existing fill.

Upon application to the local health department, a site that has existing fill, including one on which fill material was placed prior to July 1, 1977, and that has sand or loamy sand for a depth of at least 36 inches below the existing ground surface, shall be evaluated for an on-site wastewater system. The Commission shall adopt rules to implement this section.

"§ 130A-342. Aerobic systems.

(a) Individual aerobic sewage treatment plants that are approved and listed in accordance with the standards adopted by the National Sanitation Foundation, Inc. for Class I sewage treatment plants as set out in Standard 40, as amended, shall be permitted under rules promulgated by the Commission. The Commission may establish standards in addition to those set by the National Sanitation Foundation, Inc.

(b) A permitted plant shall be operated and maintained by a certified wastewater treatment facility ~~operator employed by or under contract to the county in which the plant is located.~~ operator.

(c) The performance of individual aerobic treatment plants is to be documented by the counties and sent to the Department of Environment, Health, and Natural ~~Resources.~~ Resources annually.

"*§ 130A-343. Experimental and innovative systems permitted.*

(a) The Commission shall adopt rules for the approval and permitting of experimental and innovative wastewater systems. The rules shall address the criteria to be considered prior to issuing a permit for such a system, requirements for preliminary design plans and specifications that must be submitted, methodology to be used, standards for monitoring and evaluating the system, research evaluation of the system, the plan of work for monitoring system performance and maintenance, and any additional matters the Commission deems appropriate.

(b) The Commission shall adopt rules governing the operation and maintenance of experimental and innovative wastewater systems approved and permitted under subsection (a) of this section.

(c) The Department shall provide a listing of all approved experimental and innovative wastewater systems to the local health departments annually, and more frequently, when the Department makes a final agency decision on a new system.

Sec. 2. G.S. 130A-344 is repealed.

Sec. 3. This act becomes effective October 1, 1995 and applies to all improvement permits and authorizations to construct issued on or after the effective date of this act.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

H.B. 593 **CHAPTER 286**

AN ACT TO INCORPORATE THE TOWN OF BOGUE AND CONCERNING THE TOWN OF CHADWICK ACRES.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Bogue is enacted to read:

"CHARTER OF THE TOWN OF BOGUE.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. *Incorporation and Corporate Powers.* The inhabitants of the Town of Bogue are a body corporate and politic under the name 'Town of Bogue'. Under that name they have all the powers, duties, rights,

privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. *Town Boundaries.* Until modified in accordance with law, the boundaries of the Town of Bogue are as follows:

BEGINNING at a point on the east line of the Town of Cape Carteret corporate boundary which beginning point is the intersection of the east line of Bayshore Park Subdivision with the south line of Hunting Bay Drive as shown on plats of Bayshore Park Subdivision and Section III of Hunting Bay Subdivision as recorded in Map Book 4, Page 35, Map Book 5, Page 65, and Map Book 25, Page 64, Carteret County Registry; running thence along the east line of Bayshore Park in a southerly direction 1,200 feet more or less to the southwestern most corner of Lot 14, Section III, Hunting Bay Subdivision (Map Book 25, Page 64); thence in an easterly direction along the south line of Lots 12, 13 and 14, Section III, Hunting Bay, 400 feet, more or less, to the southeast corner of Lot 12, Section III, Hunting Bay; thence along the west boundary of Sections III and I of Hunting Bay in a southerly direction to the north line of Park Avenue at the southwest corner of Lot 20, Section I, Hunting Bay (Map Book 14, Page 88); thence crossing Park Avenue in a southerly direction and continuing along the west boundary of Section I of Hunting Bay to the northwest corner of the Hunting Bay recreational area as shown on a plat recorded in Map Book 14, Page 88; thence continuing in a southerly and southeasterly direction with the recreational area lot to the high water mark of Bogue Sound; thence with the eastern boundary of Hunting Bay and Bogue Sound in a northerly, easterly, and northeasterly direction to the southwest corner of the United States Marine Corps Air Field 'Bogue'; thence in an easterly direction with the south boundary of the United States Marine Corps property known as Bogue Air Field and along the high water mark of Bogue Sound in a northeasterly and easterly direction to Goose Creek; thence in a northerly, northwesterly, northeasterly, and easterly direction with the high water mark of Goose Creek to the southwestern most corner of Goose Creek Subdivision as shown on a plat of the same recorded in Map Book 4, Page 10, Carteret County Registry; thence continuing northwesterly and northerly down the center of the west prong of Goose Creek and along the east line of Okla Taylor to North Carolina Highway 24; thence crossing North Carolina Highway 24 and continuing with the branch of the west prong of Goose Creek in a northerly direction and along the east line of Okla Taylor to the south line of State Road 1118; thence crossing State Road 1118 and continuing with the branch of the west prong of Goose Creek in a northerly direction along the east line of F.E. Toodle (book 304, pg. 263) and Robert H. Davenport (book 494, pg. 130), to the easternmost corner of Stonegate Estates Subdivision; thence with the boundary perimeters of Stonegate Estates Subdivision in a northerly, northwesterly, southerly, westerly, and southerly direction along the outside perimeters of the Stonegate Estate Subdivision to the north line of State Road 1118; thence with the north line of State Road 1118 in a westerly direction to the southeast corner of the Bethlehem Methodist Church Cemetary, and continuing in a northerly,

westerly and southerly directions along the perimeter of the Bethlehem Methodist Church Cemetary to the north line State Road 1118; thence in a westerly direction with the north line of State Road 1118 approximately 400 feet to the common corner between the Croatan National Forest and the William V. Pritchett property at the north line of State Road 1118; thence along the common boundary of Croatan National Forest and the properties of William V. Pritchett and George Tootle in a northerly direction to the common corner of the W. B. McLean Estate and the Croatan National Forest;thence in a westerly and southwesterly direction along the south line of the W. B. McLean Estate Property and along the north lines of the Smith and Ahern properties approximately 2500 feet more or less to the common corner of the W. B. McLean estate and the property line of L. B. and Herbert Page (formerly Croatan National Forest Property); thence with the L.B. and Herbert Page property lines in a southerly direction to the north boundary of Lake Arthur Subdivision; thence in a westerly direction along the north line of the Lake Arthur Subdivision to the common corner of the L.B. and Herbert Page property and the north boundary of the Lake Arthur subdivision; thence along the common boundary between the property of L.B. Page, Herbert Page and Joel Taylor, in a northwesterly direction to the W.B. McLean south line; thence in a westerly direction approximately 300 feet to the northwest corner of Joel Taylor (now or formerly); thence in a southeasterly direction along the west line of the W.B. McLean Estate (Book 628, Page 66) to the southeast corner of the W.B. McLean Estate; thence continuing westerly along the south line of W.B. McLean and Paxton M. Holz (Book 629, Page 418) to the north line of section A of Quail Wood Acres Subdivision (Map Book 15, Page 55) and the easterly extention of the same; thence along the east line of Quail Wood Subdivision southerly to the Southeast corner of Quail Wood Subdivision; thence Westerly along the south line of Quail Wood Subdivision to the east line of Fox Forest Subdivision; thence Southerly with Fox Forest Subdivision to North Carolina Highway 24, the eastern limits of the Town of Cape Carteret; thence Southerly and crossing Highway 24 and with the Cape Carteret limits to the point of beginning; and excluding Fox Forest and Quail Wood Subdivisions herewith.

"Sec. 2.2. *Survey.* The Town Board is authorized to cause to be completed a survey of the above described property by a registered land surveyor or engineer and to adopt the survey by resolution as the official map of the boundaries of the Town. Upon adoption and recordation of the same in the Carteret County Register of Deeds, the same shall become the official plat or map of the Town boundaries.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. *Structure of Governing Body; Number of Members.* The governing body of the Town of Bogue is the Town Council which shall have five members.

"Sec. 3.2. *Manner of Electing Board.* The qualified voters of the entire Town shall elect the members of the Council.

"Sec. 3.3. *Term of Office of Council Members.* Members of the Town Council are elected to four-year terms, except at the initial election in 1995,

the three highest vote getters shall be elected to four-year terms, and the next two highest vote getters shall be elected to two-year terms.

"Sec. 3.4. *Selection of Mayor; Term of Office.* The qualified voters of the entire Town shall elect the Mayor. A Mayor shall be elected in 1995 and biennially thereafter for a two-year term.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. *Conduct of Town Elections.* The Town Council shall be elected on a nonpartisan basis and the results determined by the plurality method as provided by G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. *Mayor-Council Plan.* The Town of Bogue operates under the Mayor-Council Plan as provided by Part 3 of Article 7 of Chapter 160A of the General Statutes."

Sec. 2. Until members of the Town Council are elected in 1995 and qualify in accordance with the Town Charter and the law of North Carolina, Harold L. Shipp, P.M. Russell, Charles Wilton, William D. Guthrie, Sr., and Gene Riggs shall serve as members of the Town Council. They shall appoint a Mayor to serve until a Mayor is elected and qualifies.

Sec. 3. From and after the effective date of this act, the citizens and property in the Town of Bogue shall be subject to municipal taxes levied for the year beginning January 1, 1995, and for that purpose the Town shall obtain from Carteret County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1995, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town may adopt a budget ordinance for fiscal year 1995-96 without following the timetable in the Local Government Budget and Fiscal Control Act.

Sec. 4. At a date in September of 1995 established by the Carteret County Board of Commissioners, the Carteret County Board of Elections shall conduct a special election for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Bogue, the question of whether or not such area shall be incorporated as the Town of Bogue. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

Sec. 5. In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Incorporation of the Town of Bogue".

Sec. 6. In the election, if a majority of the votes are cast "For incorporation of the Town of Bogue", Sections 1 through 3 of this act shall become effective on the date that the Carteret County Board of Elections certifies the results of the election. Otherwise, those sections shall have no force and effect.

Sec. 7. If a majority of the voters approve the incorporation of Bogue, the election of the Town Council and the Mayor shall take place at an election held on November 7, 1995. The Carteret County Board of Elections shall establish a special candidate filing period in lieu of that provided by Chapter 163 of the General Statutes.

Sec. 7.1. The area described as the corporate limits of the Town of Chadwick Acres in Chapter 1014 of the Session Laws of 1961 shall be considered an incorporated municipality for the purposes of G.S. 160A-36(b)(3) and G.S. 160A-48(b)(3).

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

H.B. 739 **CHAPTER 287**

AN ACT TO SIMPLIFY THE TRANSFER OF CREDIT BETWEEN NORTH CAROLINA INSTITUTIONS OF HIGHER EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. The Board of Governors of The University of North Carolina and the State Board of Community Colleges shall develop a plan for the transfer of credits between the institutions of the North Carolina Community College System and between the institutions of the North Carolina Community College System and the constituent institutions of The University of North Carolina. The Board of Governors and the State Board of Community Colleges shall make a preliminary report to the Joint Legislative Oversight Committee on Education prior to March 1, 1996. The preliminary report shall include a timetable for the implementation of the plan for the transfer of credits.

Sec. 2. It is the intent of the General Assembly to review the plan developed by the Board of Governors and the State Board of Community Colleges pursuant to Section 1 of this act and to adopt a plan prior to July 1, 1996, for the transfer of credits between the institutions of the North Carolina Community College System and between the institutions of the North Carolina Community College System and the constituent institutions of The University of North Carolina.

Sec. 3. The State Board of Community Colleges shall implement a common course numbering system, to include common course descriptions, for all community college programs by June 1, 1997. A progress report on the development of the common course numbering system shall be made to the Joint Legislative Oversight Committee on Education by March 1, 1996.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

H.B. 740 **CHAPTER 288**

AN ACT TO FACILITATE THE TRANSFER OF ACADEMIC CREDIT FROM COMMUNITY COLLEGE PROGRAMS TO FOUR-YEAR COLLEGE PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115D-4.1 reads as rewritten:

"§ *115D-4.1. College transfer program ~~approval.~~ approval; standards for programs.*

~~(a) Enrollment in the college transfer program of a community college that offered this program before July 1, 1987, shall not exceed its current percent of college transfer enrollment or fifteen percent (15%) of the institution's total budget full-time equivalent students or 132 full-time equivalent students, whichever is greater. The State Board of Community Colleges may, in its own discretion, make exception to this requirement where the inherent market demand of a community causes an institution to exceed the fifteen percent (15%), or its current enrollment percentage.~~

(b) The State Board of Community Colleges may approve the addition of the college transfer program to a community college. If addition of the college transfer program to an institution would require a substantial increase in funds, State Board approval shall be subject to appropriation of funds by the General Assembly for this purpose.

(c) Addition of the college transfer program shall not decrease an institution's ability to provide programs within its basic mission of vocational and technical training and basic academic education. ~~Enrollment in the college transfer program shall not exceed fifteen percent (15%) of an institution's total budget full-time equivalent students or 132 full-time equivalent students, whichever is greater, in each institution where the college transfer program is added after June 30, 1987; provided, however, the State Board of Community Colleges may, in is own discretion, make exceptions to this requirement where the inherent market demand of a community causes an institution to exceed the fifteen percent (15%).~~

(d) The State Board of Community Colleges shall develop appropriate criteria and standards to regulate the addition of the college transfer program to institutions. ~~The State Board is authorized to apply the criteria and standards for addition of the college transfer program adopted as a proposed rule at its April 9, 1987, meeting until modified through the rule-making process.~~

(e) The State Board of Community Colleges shall develop appropriate criteria and standards to regulate the operation of college transfer programs. The criteria and standards shall require:

(1) All college transfer programs to continue to meet the accreditation standards of the Southern Association of Colleges and Schools,

(2) Each community college that offers a college transfer program to have an articulation agreement with at least one four-year college or university for the acceptance of those courses,

(3) Each community college that offers a college transfer program to disclose to students when they register for college transfer courses the articulation agreements the community college has with a four-year college or university.

The State Board of Community Colleges shall report annually to the General Assembly on compliance of the community colleges with these criteria and standards.

(f) The Board of Governors of The University of North Carolina shall report to each community college and to the State Board of Community Colleges in accordance with G.S. 116-11(10b) on the academic performance

of that community college's transfer students. If the State Board of Community Colleges finds that college transfer students from a community college are not consistently performing adequately at a four-year college, the Board shall review the community college's program and determine what steps are necessary to remedy the problem. The Board shall report annually to the General Assembly on the reports it receives and on what steps it is taking to remedy problems that it finds."

Sec. 2. G.S. 115D-5(a) reads as rewritten:

"(a) The State Board of Community Colleges may adopt and execute such policies, regulations and standards concerning the establishment, administration, and operation of institutions as the State Board may deem necessary to insure the quality of educational programs, to promote the systematic meeting of educational needs of the State, and to provide for the equitable distribution of State and federal funds to the several institutions.

The State Board of Community Colleges shall establish standards and scales for salaries and allotments paid from funds administered by the State Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The State Board shall have authority with respect to individual institutions: to approve sites, buildings, building plans, budgets; to approve the selection of the chief administrative officer; to establish and administer standards for professional personnel, curricula, admissions, and graduation; to regulate the awarding of degrees, diplomas, and certificates; to establish and regulate student tuition and fees within policies for tuition and fees established by the General Assembly; and to establish and regulate financial accounting procedures.

The State Board of Community Colleges shall require all community colleges to meet the faculty credential requirements of the Southern Association of Colleges and Schools for all community college programs."

Sec. 3. G.S. 116-11 is amended by adding a new subdivision to read:

"(10b) The Board of Governors of The University of North Carolina shall report to each community college and to the State Board of Community Colleges on the academic performance of that community college's transfer students."

Sec. 4. This act becomes effective September 1, 1995.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

H.B. 767 **CHAPTER 289**

AN ACT ENCOURAGING THE STATE BOARD OF EDUCATION TO MAKE AVAILABLE INFORMATION ON GUN SAFETY PROGRAMS FOR THE STATE'S ELEMENTARY SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. The North Carolina General Assembly encourages the State Board of Education to make available to local boards of education information regarding appropriate gun safety programs for elementary schools. The State Board of Education is also encouraged to promote in State schools those gun safety education programs, such as the Eddie Eagle

Gun Safety Program, that teach children they should never touch a gun unless supervised by an adult, and that are designed to help prevent firearm-related accidents among children.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

H.B. 851 **CHAPTER 290**

AN ACT TO CHANGE SOME PROCEDURES WITH REGARD TO SURETY BONDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-531 reads as rewritten:

"§ *15A-531. Definitions.*

As used in this Article the following definitions apply unless the context clearly requires otherwise:

(1) Bail Bond. -- An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A surety bond shall be considered the same as a cash deposit for all purposes in this Article.

(2) Obligor. -- A principal or a surety on a bail bond.

(3) Principal. -- A defendant or material witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.

(4) Surety. -- One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail."

Sec. 2. G.S. 15A-540(a) reads as rewritten:

"(a) A surety may surrender his principal to the sheriff of the county in which the principal is bonded to ~~appear.~~ appear or to the sheriff where the defendant was bonded. A surety may arrest his principal for the purpose of returning him to the sheriff. Upon surrender of the principal the sheriff must provide a receipt to the surety, a copy of which must be filed with the clerk. Upon application by the surety after the surrender of the principal, before the forfeiture of bail under G.S. 15A-544(b), the clerk must exonerate him from his bond."

Sec. 3. G.S. 15A-544 reads as rewritten:

"§ *15A-544. Forfeiture.*

(a) By entering into a bail bond the obligor submits himself to the jurisdiction of the court and irrevocably appoints the clerk as his agent for any proceedings with reference to the bond. His liability may be enforced on motion without the necessity of an independent action.

(b) If the principal does not comply with the conditions of the bail bond, the court having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is ordered by the court, a copy of the order of

forfeiture and notice that judgment will be entered upon the order after 60 days must be served on each obligor. Service is to be made by the sheriff by delivery of the order and notice to him or by delivery at his dwelling house or place of abode with some person of suitable age and discretion residing therein. If the sheriff is unable to effect service because an obligor cannot be found or has no dwelling house or place of abode known to the sheriff, he must file a return to this effect; the clerk must then mail a copy of the order of forfeiture and notice to the obligor at his address of record and note on the original the date of mailing. Service is complete three days after the mailing.

(c) ~~If~~ Except as provided in subsection (c1) of this section, if the principal does not appear before the court having jurisdiction within 60 days of the date of service, or on the first day of the next session of court commencing more than 60 days after the date of service, and satisfy the court that his appearance on the date set was impossible or that his failure to appear was without his fault, the court must enter judgment for the State against the principal and his sureties for the amount of the bail and the costs of the proceedings. If the principal appears within the time allowed following the date of service and satisfies the court that his appearance on the date set was impossible or that his failure to appear was without his fault, the order of forfeiture must be set aside. If the principal appears but is unable to satisfy the court that his appearance on the date set was impossible or that his failure to appear was without his fault, but the court determines that justice does not require the forfeiture of the full amount of the bond, the court may enter judgment in an amount it considers appropriate.

(c1) If the principal does not appear before the court having jurisdiction because the principal is incarcerated and unable to appear before the court, but the surety appears within the time allowed following the date of service and satisfies the court that the principal's appearance on the date set was impossible because the principal was incarcerated, the order of forfeiture must be set aside.

(d) To facilitate the procedure under this section, the clerk in each county must present a forfeiture roll at the first session of superior court commencing more than 60 days after the entry of any order of forfeiture in either the district or superior court. The forfeiture roll must list the names of all principals as to which forfeiture has been ordered in the county in the past three years and as to which judgments of forfeiture against obligors have not been entered or, if entered, not yet satisfied by execution. In addition, the forfeiture roll must show the amount of the bond ordered forfeited in each case and the names of all sureties liable on each bond.

(e) At any time within 90 days after entry of the judgment against a principal or his surety, or on the first day of the next session of court commencing more than 90 days after the entry of the judgment, the court may direct that the judgment be remitted in whole or in part, upon such conditions as the court may impose, if it appears that justice requires the remission of part or all of the judgment. If the principal is incarcerated or served an order for arrest in North Carolina within 90 days of the entry of the judgment and the principal placed on a new bond or released by the court, then the forfeiture shall be stricken upon the payment of costs. If the

principal is incarcerated or served an order for arrest and the principal placed on a new bond or released by the court anytime between failure to appear and up to 90 days after the entry of judgment, then the bond shall be totally remitted upon the payment of costs.

(f) If a judgment has not been remitted within the period provided in subsection (e) above, the clerk must issue execution on the judgment within 30 days, and remit the clear proceeds to the county for use in maintaining free public schools. Any clerk who fails to perform his duty as required in this subsection is subject to a penalty of five hundred dollars ($500.00).

(g) If a return of execution upon a judgment against an obligor remains unsatisfied for 10 days, the obligor may not become surety on any bail bond in the prosecutorial district so long as the judgment remains unsatisfied. Nothing in this subsection makes lawful any act made unlawful by Article 71 of Chapter 58 of the General Statutes.

(h) For extraordinary cause shown, the court which has entered judgment upon a forfeiture of a bond may, after execution, remit the judgment in whole or in part and order the clerk to refund such amounts as the court considers appropriate. Any person moving for remission of judgment must do so by verified petition, and a copy of the petition must be served upon the attorney for the county school board at least three working days prior to the hearing on the motion. The moving party must notify the attorney for the school board of the time and place of the hearing, and such attorney, if he so desires, must be given an opportunity to appear and be heard. If money has been paid to the county pursuant to execution on a judgment of forfeiture, it must refund to the person entitled the amount of any remission granted under the terms of this subsection upon receipt of a certified copy of the judgment of remission from the clerk."

Sec. 4. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"*§ 15A-547.1. Remit bail bond if defendant sentenced to community or intermediate punishment.*

If a defendant is convicted and sentenced to community punishment or intermediate punishment and no appeal is pending, then the court shall remit the bail bond to the obligor in accordance with the provisions of this Article and shall not require that the bail bond continue to be posted while the defendant serves his or her sentence."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

H.B. 907 **CHAPTER 291**

AN ACT TO AUTHORIZE THE STATE AND ITS POLITICAL SUBDIVISIONS TO BE SUBJECT TO STATUTES OF LIMITATION AND REPOSE FOR CERTAIN CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-50 reads as rewritten:

"*§ 1-50. Six years.*

(a) Within six years an action --

(1) Upon the official bond of a public officer.

(2) Against an executor, administrator, collector, or guardian on his official bond, within six years after the auditing of his final account by the proper officer, and the filing of the audited account as required by law.

(3) For injury to any incorporeal hereditament.

(4) Against a corporation, or the holder of a certificate or duplicate certificate of stock in the corporation, on account of any dividend, either a cash or stock dividend, paid or allotted by the corporation to the holder of the certificate or duplicate certificate of stock in the corporation.

(5) a. No action to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property shall be brought more than six years from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement.

b. For purposes of this subdivision, an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes:

1. Actions to recover damages for breach of a contract to construct or repair an improvement to real property;
2. Actions to recover damages for the negligent construction or repair of an improvement to real property;
3. Actions to recover damages for personal injury, death or damage to property;
4. Actions to recover damages for economic or monetary loss;
5. Actions in contract or in tort or otherwise;
6. Actions for contribution indemnification for damages sustained on account of an action described in this subdivision;
7. Actions against a surety or guarantor of a defendant described in this subdivision;
8. Actions brought against any current or prior owner of the real property or improvement, or against any other person having a current or prior interest therein;
9. Actions against any person furnishing materials, or against any person who develops real property or who performs or furnishes the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property.

c. For purposes of this subdivision, 'substantial completion' means that degree of completion of a project, improvement or specified area or portion thereof (in accordance with the contract, as modified by any change orders agreed to by the parties) upon attainment of which the owner can use the same

for the purpose for which it was intended. The date of substantial completion may be established by written agreement.

d. The limitation prescribed by this subdivision shall not be asserted as a defense by any person in actual possession or control, as owner, tenant or otherwise, of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the injury or death for which it is proposed to bring an action, in the event such person in actual possession or control either knew, or ought reasonably to have known, of the defective or unsafe condition.

e. The limitation prescribed by this subdivision shall not be asserted as a defense by any person who shall have been guilty of fraud, or willful or wanton negligence in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property, or to a surety or guarantor of any of the foregoing persons, or to any person who shall wrongfully conceal any such fraud, or willful or wanton negligence.

f. This subdivision prescribes an outside limitation of six years from the later of the specific last act or omission or substantial completion, within which the limitations prescribed by G.S. 1-52 and 1-53 continue to run. For purposes of the three-year limitation prescribed by G.S. 1-52, a cause of action based upon or arising out of the defective or unsafe condition of an improvement to real property shall not accrue until the injury, loss, defect or damage becomes apparent or ought reasonably to have become apparent to the claimant. However, as provided in this subdivision, no action may be brought more than six years from the later of the specific last act or omission or substantial completion.

g. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c), G.S. 1-52(16) and G.S. 1-47(2).

(6) No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption.

(7) a. No action against any registered land surveyor as defined in G.S. 89C-3(9) or any person acting under his supervision and control for physical damage or for economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting shall be brought more than 10 years from the last act or omission giving rise to the cause of action.

b. For purposes of this subdivision, 'surveying and platting' means boundary surveys, topographical surveys, surveys of property lines, and any other measurement or surveying of real property and the consequent graphic representation thereof.

c. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c) and G.S. 1-52(16).

(b) This section applies to actions brought by a private party and to actions brought by the State or a political subdivision of the State."

Sec. 2. This act repeals the common law doctrine of nullum tempus occurrit regi for civil actions brought by the State or a political subdivision of the State when the action is subject to G.S. 1-50, as amended by Section 1 of this act, when brought by a private party.

Sec. 3. This act becomes effective October 1, 1995, and applies to civil actions commenced on or after that date.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

H.B. 459 **CHAPTER 292**

AN ACT TO PROVIDE FOR THE CANCELLATION OF A NOTE OR OTHER INDEBTEDNESS SECURED BY A DEED OF TRUST OR MORTGAGE BY EXECUTION OF A CERTIFICATE OF SATISFACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S 45-37(a)(5) reads as rewritten:

"(5) By exhibition to the register of deeds of a notice of satisfaction of a deed of trust, mortgage, or other instrument which has been acknowledged by the trustee or the mortgagee before an officer authorized to take acknowledgments. The notice of satisfaction shall be substantially in the form set out in G.S. 47-46.1. The notice of satisfaction shall recite the names of all parties to the original instrument, the amount of the obligation secured, the date of satisfaction of the obligation, and a reference by book and page number to the record of the instrument satisfied.

Upon exhibition of the notice of ~~satisfaction and payment of the appropriate fee provided in G.S. 161-10,~~ satisfaction, the register of deeds shall record the notice of satisfaction and cancel the deed of trust, mortgage, or other instrument ~~by recording a record of satisfaction as described in G.S. 45-37.2, may make an entry of satisfaction on the margin of the record,~~ as required by G.S. 45-37.2. No fee shall be charged for recording any documents or certifying any acknowledgments pursuant to this subdivision. The register of deeds shall not be required to verify or make inquiry concerning the authority of the person executing the notice of satisfaction to do so."

Sec. 2. G.S. 45-37(a) is amended by adding a new subdivision to read:

"(6) By exhibition to the register of deeds of a certificate of satisfaction of a deed of trust, mortgage, or other instrument that has been acknowledged before an officer authorized to take acknowledgments by the owner of the note, bond, or other evidence of indebtedness secured by the deed of trust or mortgage. The certificate of satisfaction shall be accompanied by the note, bond, or other evidence of indebtedness, if available, with an endorsement of payment and satisfaction by the owner of the note, bond, or other evidence of indebtedness. If such evidence of indebtedness cannot be produced, an affidavit, hereafter referred to as an 'affidavit of lost note', signed by the owner of the note, bond, or other evidence of indebtedness, shall be delivered to the register of deeds in lieu of the evidence of indebtedness certifying that the debt has been satisfied and stating: (i) the date of satisfaction; (ii) that the note, bond, or other evidence of indebtedness cannot be found; and (iii) that the person signing the affidavit is the current owner of the note, bond, or other evidence of indebtedness. The certificate of satisfaction shall be substantially in the form set out in G.S. 47-46.2 and shall recite the names of all parties to the original instrument, the amount of the obligation secured, the date of satisfaction of the obligation, and a reference by book and page number to the record of the instrument satisfied. The affidavit of lost note, if necessary, shall be substantially in the form set out in G.S. 47-46.3.

Upon exhibition of the certificate of satisfaction and accompanying evidence of indebtedness endorsed paid and satisfied, or upon exhibition of an affidavit of lost note, the register of deeds shall record the certificate of satisfaction and either the accompanying evidence of indebtedness or the affidavit of lost note, and shall cancel the deed of trust, mortgage, or other instrument as required by G.S. 45-37.2. No fee shall be charged for recording any documents or certifying any acknowledgments pursuant to this subdivision. The register of deeds shall not be required to verify or make inquiry concerning the authority of the person executing the certificate of satisfaction to do so."

Sec. 3. Chapter 47 of the General Statutes is amended by adding a new section to read:

"*§ 47-46.2. Certificate of satisfaction of deed of trust, mortgage, or other instrument.*

The form of a certificate of satisfaction of a deed of trust, mortgage, or other instrument pursuant to G.S. 45-37(a)(6) shall be substantially as follows:

CERTIFICATE OF SATISFACTION

North Carolina, County.

I, (name of owner of the note or other indebtedness secured by the deed of trust or mortgage), certify that I am the owner of the indebtedness secured by the hereafter described deed of trust or mortgage and that the debt or other obligation in the amount of secured by the (deed of trust) (mortgage) (other instrument) executed by (grantor) (mortgagor), (trustee) (leave blank if mortgage), and (beneficiary) (mortgagee), and recorded in County at (book and page) was satisfied on (date of satisfaction). I request that this certificate of satisfaction be recorded and the above-referenced security instrument be canceled of record.

(Signature of owner of note)

[Acknowledgment before officer authorized to take acknowledgments]."

Sec. 4. Chapter 47 of the General Statutes is amended by adding a new section to read:

"*§ 47-46.3. Affidavit of lost note.*

The form of an affidavit of lost note, if required pursuant to G.S. 45-37(a)(6), shall be substantially as follows:

AFFIDAVIT OF LOST NOTE

[Name of affiant] personally appeared before me in County, State of , and having been duly sworn (or affirmed) made the following affidavit:

1. The affiant is the owner of the note or other indebtedness secured by the deed of trust, mortgage, or other instrument executed by (grantor, mortgagor), (trustee), and (beneficiary, mortgagee), and recorded in County at (book and page); and

2. The note or other indebtedness has been lost and after the exercise of due diligence cannot be located.

3. The affiant certifies that all indebtedness secured by the deed of trust, mortgage, or other instrument has been satisfied and the affiant is responsible for cancellation of the same.

(Signature of affiant)

Sworn to (or affirmed) and subscribed before me this day of , 19 .

[Signature and seal of notary public or other official authorized to administer oaths]."

Sec. 5. G.S. 45-37(a)(2) reads as rewritten:

"(2) By exhibition of any deed of trust, mortgage or other instrument accompanied with the bond, note, or other instrument thereby secured to the register of deeds, with the endorsement of payment and satisfaction appearing ~~thereon~~ thereon, dated on or before December 31, 1995, and made by:

a. The obligee,
b. The mortgagee,
c. The trustee,
d. An assignee of the obligee, mortgagee, or trustee, or
e. Any chartered banking institution, or savings and loan association, national or state, or credit union, qualified to do business in and having an office in the State of North Carolina, when so endorsed in the name of the institution by an officer thereof. If the endorsement of payment and satisfaction is undated, no cancellation may be made pursuant to this subdivision.

Upon exhibition of the instruments, the register of deeds shall cancel the mortgage, deed of trust or other instrument by recording a record of satisfaction as described in G.S. 45-37.2, and may make an entry of satisfaction on the margin of the record. The person so claiming satisfaction, performance or discharge of the debt or other obligation may retain possession of all of the instruments exhibited. The exhibition of the mortgage, deed of trust or other instrument alone to the register of deeds, with endorsement of payment, satisfaction, performance or discharge, shall be sufficient if the mortgage, deed of trust or other instrument itself sets forth the obligation secured or the performance of any other obligation and does not call for or recite any note, bond or other instrument secured by it. The register of deeds may require the person exhibiting the instruments for cancellation to furnish him an acknowledgment of cancellation of the mortgage, deed of trust or other instrument for the purpose of showing upon whose request and exhibition the mortgage, deed of trust or other instrument was canceled."

Sec. 6. G.S. 45-37.2 reads as rewritten:

"*§ 45-37.2. Recording satisfactions of deeds of trust and mortgages.*

(a) When a notice of satisfaction is recorded pursuant to G.S. 45-37(a)(5) or a certificate of satisfaction is recorded pursuant to G.S. 45-37(a)(6), the register of deeds shall make an entry of satisfaction on the notice or certificate and record and index the instrument.

(b) When a deed of trust, mortgage, or other instrument is satisfied by a method other than by means of a notice of satisfaction or certificate of satisfaction, the ~~The~~ register of deeds shall record ~~the~~ a record of satisfaction ~~and cancel the record of every deed of trust or mortgage satisfied by recording a record of satisfaction which shall consist~~ consisting of either a separate ~~instrument,~~ instrument or ~~that part~~ all or a portion of the original deed of trust or mortgage rerecorded, and shall make the appropriate entry of satisfaction as provided in G.S. 45-37 on each record of satisfaction. A separate instrument or original deed of trust or mortgage rerecorded pursuant to this subsection shall contain ~~reciting the~~ (i) names of all parties to the original instrument, (ii) the amount of the obligation secured, (iii) the date of satisfaction of the obligation, ~~the appropriate entry of satisfaction as provided in G.S. 45-37,~~ (iv) a reference by book and page number to the

record of the instrument satisfied, and (v) the date of recording the notice of satisfaction.

(c) Whenever it is practical to do so, the register of deeds may make a marginal notation of satisfaction in addition to making the recordation required by this section."

Sec. 7. Section 5 of this act becomes effective January 1, 1996. The remainder of this act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

S.B. 51 **CHAPTER 293**

AN ACT TO REQUIRE A ONE-YEAR SUSPENSION FOR ANY STUDENT WHO BRINGS CERTAIN WEAPONS ONTO SCHOOL PROPERTY AND TO ALLOW THE SUPERINTENDENT TO MODIFY THE SUSPENSION FOR CHILDREN WITH SPECIAL NEEDS OR BY PROVIDING AN ALTERNATIVE SCHOOL SETTING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-391 is amended by adding a new subsection to read:

"(d1) A local board of education shall suspend for 365 days any student who brings a weapon, as defined in G.S. 14-269.2(b) and (g), onto school property. The local board of education upon recommendation by the superintendent may modify this suspension requirement on a case-by-case basis which includes, but is not limited to, the procedures set out in G.S. 115C-112 and may also provide, or contract for the provision of, educational services to any student suspended pursuant to this subsection in an alternative school setting or in another setting that provides educational and other services."

Sec. 2. G.S. 115C-391(e) reads as rewritten:

"(e) A decision of a local board under subsection ~~(c) or (d)~~ (c), (d), or (d1) is final and, except as provided in this subsection, is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. A person seeking judicial review shall file a petition in the superior court of the county where the local board made its decision."

Sec. 3. This act becomes effective August 1, 1995, and applies to any student who brings a weapon onto school property on or after that date.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

S.B. 244 **CHAPTER 294**

AN ACT TO PROVIDE FOR THE SUMMARY ADMINISTRATION OF AN ESTATE WHERE A SURVIVING SPOUSE IS THE SOLE BENEFICIARY OF THE ESTATE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 28A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 28.

"Summary Administration.

"§ 28A-28-1. Summary administration where spouse is sole beneficiary.

When a decedent dies testate or intestate leaving a surviving spouse as the sole devisee or heir, the surviving spouse may file a petition for summary administration with the clerk of superior court of the county where the decedent was domiciled at the time of death. This procedure is available if the decedent died partially testate, provided that the surviving spouse is the sole devisee under the will and the sole heir of the decedent's intestate property. This procedure is not available if the decedent's will provides that it is not available or if the devise to the surviving spouse is in trust rather than outright.

"§ 28A-28-2. Petition.

(a) The petition shall be signed by the surviving spouse and verified to be accurate and complete to the best of the spouse's knowledge and belief and shall state as follows:

(1) The name and address of the spouse and the fact that he or she is the surviving spouse of the decedent;

(2) The name and domicile of the decedent at the time of death;

(3) The date and place of death of the decedent;

(4) The date and place of marriage of the spouse and the decedent;

(5) A description sufficient to identify each tract of real property owned in whole or in part by the decedent at the time of death;

(6) A description of the nature of the decedent's personal property and the location of such property, as far as these facts are known or can with reasonable diligence by ascertained;

(7) The probable value of the decedent's personal property, so far as the value is known or can with reasonable diligence be ascertained;

(8) That no application or petition for appointment of a personal representative is pending or has been granted in this State;

(9) That the spouse is the sole devisee or sole heir, or both, of the decedent, and that there is no other devisee or heir; that the decedent's will, if any, does not prohibit summary administration; and that any property passing to the spouse under the will is not in trust;

(10) The name and address of any executor or coexecutor named by the will and that, if the decedent died testate, a copy of the petition has been personally delivered or sent by first-class mail by the spouse to the last-known address of any executor or coexecutor named by the will, if different from the spouse;

(11) That, to the extent of the value of the property received by the spouse under the will of the decedent or by intestate succession, the spouse assumes all liabilities of the decedent that were not discharged by reason of death and assumes liability for all taxes

and valid claims against the decedent or the estate, as provided in G.S. 28A-28-6; and

(12) If the decedent died testate, that the decedent's will has been admitted to probate in the court of the proper county; that a duly certified copy of the will has been recorded in each county in which is located any real property owned by the decedent at the time of death; and that a certified copy of the decedent's will is attached to the petition.

(b) The petition shall be filed by the clerk upon payment of the fee provided in G.S. 7A-307 and shall be indexed in the index to estates.

"*§ 28A-28-3. Clerk's order.*

If it appears to the clerk that the petition and supporting evidence, if any, comply with the requirements of G.S. 28A-28-2 and on the basis thereof the spouse is entitled to summary administration, the clerk shall enter an order to that effect and no further administration of the estate is necessary. Nothing in this section shall preclude a petition under the provisions of G.S. 28A-28-7(a) or the appointment of a personal representative or a collector under the provisions of Article 6 or Article 11 of this Chapter.

"*§ 28A-28-4. Effect of order.*

(a) The presentation of a certified copy of the order described in G.S. 28A-28-3 shall be sufficient to require the transfer to the spouse of any property or contract right owned by the decedent at the time of death, including but not limited to: (i) wages and salary; (ii) the title and license to a motor vehicle registered in the name of the decedent owner; (iii) the ownership rights of a savings account, checking account, or certificate of deposit in a bank in the name of the decedent owner; (iv) the ownership rights of a savings account, share certificate, or certificate of deposit in a credit union, building and loan association, or savings and loan association in the name of the decedent owner; and (v) the ownership rights in any stock or security registered on the books of a corporation in the name of the decedent owner.

(b) After the entry of the order described in G.S. 28A-28-3, the spouse may convey, lease, sell, or mortgage any real property devised to or inherited by the spouse from the decedent, at public or private sale, upon such terms as the spouse may determine. This section shall not limit any other powers the spouse may have over property devised to or inherited by the spouse from the decedent. The provisions of G.S. 28A-17-12 are not applicable to a conveyance, sale, lease, or mortgage under this subsection.

"*§ 28A-28-5. Effect of payment.*

The person paying, delivering, transferring, or issuing property or the evidence thereof pursuant to the order described in G.S. 28A-28-3 is discharged and released to the same extent as if the person dealt with a duly qualified personal representative of the decedent. The person is not required to see to the application of the property or evidence thereof or to inquire into the truth of any statement in the petition or order.

If any person to whom the order is presented refuses to pay, deliver, transfer, or issue any property or evidence thereof, the property may be recovered or its payment, delivery, transfer, or issuance may be compelled in an action brought for that purpose by the surviving spouse. The court

costs and attorney's fee incident to the action shall be taxed against the person whose refusal to comply with the provisions of G.S. 28A-28-4 made the action necessary.

"§ 28A-28-6. Spouse's assumption of liabilities.

If the clerk grants the order for summary administration, the spouse shall be deemed to have assumed, to the extent of the value of the property received by the spouse under the will of the decedent or by intestate succession, all liabilities of the decedent that were not discharged by reason of death and liability for all taxes and valid claims against the decedent or the estate. The value of the property is the fair market value of the property on the date of death of the decedent less any liens or encumbrances on the property so received. The spouse may assert any defense, counterclaim, cross-claim, or setoff which would have been available to the decedent if the decedent had not died except for actions listed in G.S. 28A-18-1(b). A spouse shall not be deemed to have assumed any liabilities of the decedent that were discharged by reason of death.

"§ 28A-28-7. Right to petition for appointment of personal representative; discharge of spouse's liability.

(a) Nothing in this Article shall preclude any person qualified to serve as personal representative pursuant to G.S. 28A-4-1, including the surviving spouse, from petitioning the clerk of superior court for the appointment of a personal representative or collector to administer the decedent's estate. If a personal representative or collector is appointed, the spouse shall render a proper accounting to the personal representative or collector and file a copy of the accounting with the clerk. The spouse shall deliver assets of the decedent's estate, cash, or other property and shall be discharged of liability in accordance with the provisions of subsection (b) of this section.

(b) In the event that a personal representative or collector is appointed, the spouse shall be discharged of liability for the debts of the decedent as follows:

(1) If the spouse delivers to the personal representative or collector all of the property received by the spouse in the identical form that it was received by the spouse, then the spouse will be discharged of all liability.

(2) If the spouse does not deliver to the personal representative or collector all of the property in the identical form that it was received by the spouse, then the spouse shall be discharged of liability as follows:

a. For property delivered to the personal representative or collector that is in the identical form that it was received by the spouse, the spouse is discharged to the extent of the fair market value of the property at the time of the decedent's death or the fair market value at the time the property was received by the personal representative or collector, whichever is greater.

b. For property delivered to the personal representative or collector that is not in the identical form that it was received by the spouse, the spouse is discharged to the extent of the

fair market value of such property at the time it was delivered to the personal representative or collector."

Sec. 2. This act becomes effective January 1, 1996, and shall apply to the estates of decedents dying on or after that date.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

S.B. 1042 **CHAPTER 295**

AN ACT TO MAKE VARIOUS AMENDMENTS REGARDING GUARANTEED ENERGY SAVINGS CONTRACTS IN ORDER TO ENHANCE THE VIABILITY OF GUARANTEED ENERGY SAVINGS CONTRACTS BY LOCAL GOVERNMENTAL UNITS AND TO REPEAL THE SUNSET FOR LOCAL GOVERNMENTAL UNITS TO ENTER INTO THESE CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-64.17(3) reads as rewritten:

"(3) 'Guaranteed energy savings contract' means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed costs. ~~A guaranteed energy savings contract may not require the local governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the local governmental unit uses its own forces for maintenance or if the local governmental unit can purchase maintenance services at a lower cost from another provider or contractor.~~"

Sec. 2. G.S. 143-64.17B reads as rewritten:

"*§ 143-64.17B. Guaranteed energy savings contracts.*

(a) A local governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

(1) The term of the contract does not exceed eight years from the date of the installation and acceptance by the local governmental unit of the energy conservation measures provided for under the contract.

(2) The local governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.

(3) The energy conservation measures to be installed under the contract are for an existing building.

(b) Before entering into a guaranteed energy savings contract, the local governmental unit shall provide published notice of the meeting at which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose. The notice must be published at least 15 days before the date of the meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide a bond to the local governmental unit in the amount equal to one hundred percent (100%) of the total cost of the guaranteed energy savings contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the ~~contract,~~ contract and all required shortfall payments to the local governmental unit have not been made, the local governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

(d) As used in this section, 'total cost' shall include, but not be limited to, costs of construction, costs of financing, and costs of maintenance and training during the term of the contract. 'Total cost' ~~also includes~~ does not include any obligations on termination of the contract before its ~~expiration.~~ expiration, provided that those obligations are disclosed when the contract is executed.

(e) A guaranteed energy savings contract may not require the local governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the local unit of government takes appropriate action to budget for its own forces or another provider to maintain new systems installed and existing systems affected by the guaranteed energy savings contract."

Sec. 3. Section 10 of Chapter 775 of the 1993 Session Laws reads as rewritten:

"Sec. 2. A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, ~~1997,~~ 1999."

Sec. 4. This act is effective upon ratification and applies to contracts entered into on or after that date.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

S.B. 1086 **CHAPTER 296**

AN ACT TO ALLOW BANKS TO MAKE LOANS SECURED BY SHARES OF ITS OWN STOCK OR THAT OF ITS PARENT HOLDING COMPANY UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-64 reads as rewritten:

"*§ 53-64. ~~Unlawful to loan on~~ Loans secured by bank's own stock or stock of parent bank holding company.*

~~It shall be unlawful for any bank to make any loan secured by the pledge of its own shares of stock or the stock of its parent bank holding company, nor shall any bank be the holder as pledgee, or as purchaser, of any portion of its capital stock or of the capital stock of its parent bank holding company unless such stock is purchased or pledged to it to prevent loss upon a debt~~

~~previously contracted in good faith. Provided, that whenever any bank shall have shares of its own stock or the stock of its parent bank holding company sold to, or pledged to it, for the purpose of preventing a loss upon a debt previously contracted, it shall dispose of all such shares of stock within a period of six months from the date such stock was sold or pledged to it and if not so disposed of, the same shall be charged to profit and loss and no longer carried as an asset of the bank.~~

(a) It shall be lawful for a bank to make a loan secured by the pledge of its own shares of stock or the stock of its parent holding company; provided that whenever any bank shall exercise its security interest in the shares of the bank or its parent holding company upon a loan default or other transfer, it shall dispose of all of such shares of stock within a period of six months. If such stock has not been disposed of within six months, the same shall be charged to profit and loss and no longer carried as an asset of the bank. The Commissioner may extend the six-month period not to exceed an additional six months.

(b) A bank may not make a loan to finance the purchase of or to carry its stock or the stock of its parent holding company. For purposes of this subsection, the phrase 'to carry' shall have the meaning set forth in 12 C.F.R. Part 221, by the Board of Governors of the Federal Reserve System.

(c) A bank may not purchase any portion of its shares of stock, nor the stock of its parent holding company, unless the same is purchased or pledged to the bank to prevent a loss upon a debt previously contracted in good faith. In the event the bank shall become the owner of its shares, or those of its parent holding company, the bank shall dispose of the same as provided in subsection (a) of this section."

Sec. 2. This act becomes effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

H.B. 227 **CHAPTER 297**

AN ACT TO CODIFY THE CREATION BY THE 1983 GENERAL ASSEMBLY OF THE INSTITUTE OF MEDICINE.

The General Assembly of North Carolina enacts:

Section 1. Section 197 of Chapter 923 of the Session Laws of 1983 reads as rewritten:

"Sec. 197. Chapter 90 of the General Statutes is amended by adding a new Article to read:

'ARTICLE 31.

'Institute of Medicine.

'§ *90-470. Institute of Medicine.*

The persons appointed under the provisions of this section are declared to be a body politic and corporate under the name and style of the North Carolina Institute of Medicine, and by that name may sue and be sued, make and use a corporate seal and alter the same at pleasure, contract and be contracted with, and shall have and enjoy all the rights and privileges

necessary for the purposes of this section. The corporation shall have perpetual succession.

The purposes for which the corporation is organized are to:

(1) Be concerned with the health of the people of North Carolina;
(2) Monitor and study health matters;
(3) Respond authoritatively when found advisable;
(4) Respond to requests from outside sources for analysis and advice when this will aid in forming a basis for health policy decisions.

The 18 initial members of the North Carolina Institute of Medicine shall be appointed by the Governor.

The initial members are authorized, prior to expanding the membership, to establish bylaws, to procure facilities, employ a director and staff, to solicit, receive and administer funds in the name of the North Carolina Institute of Medicine, and carry out other activities necessary to fulfill the purposes of this section.

The members shall select with the approval of the Governor additional members, so that the total membership will not exceed 100. The membership should be distinguished and influential leaders from the major health professions, the hospital industry, the health insurance industry, State and county government and other political units, education, business and industry, the universities, and the university medical centers.

The North Carolina Institute of Medicine may receive and administer funds from private sources, foundations, State and county governments, federal agencies, and professional organizations.

The director and staff of the North Carolina Institute of Medicine should be chosen from those well established in the field of health promotion and medical care.

For the purposes of Chapter 55A of the General Statutes, the members appointed under this section shall be considered the initial board of directors.

The North Carolina Institute of Medicine is declared to be under the patronage and control of the State.

The General Assembly reserves the right to alter, amend, or repeal this section.

~~There is appropriated from the General Fund to the North Carolina Institute of Medicine for fiscal year 1983-84 the sum of twenty-five thousand dollars ($25,000) to implement this section, provided that the North Carolina Institute of Medicine raises two hundred thousand dollars ($200,000) in non-State funds.~~'"

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

H.B. 378 **CHAPTER 298**

AN ACT TO RESOLVE POSSIBLE CONFLICT IN LAWS REGARDING TEMPORARY MANAGEMENT OF LONG-TERM CARE FACILITIES AND STATE/COUNTY SPECIAL ASSISTANCE FOR ADULTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-47 reads as rewritten:

"*§ 108A-47. Limitations on payments.*

No payment of assistance under this Part shall be made for the care of any person in a domiciliary facility which is owned or operated in whole or in part by any of the following:

(1) A member of the Social Services Commission, of any county board of social services, or of any board of county commissioners;

(2) An official or employee of the ~~Department~~ Department, unless the official or employee has been appointed temporary manager of the facility pursuant to G.S. 131E-237, or of any county department of social services;

(3) A spouse of a person designated in subdivisions (1) and (2)."

Sec. 2. This act becomes effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

H.B. 386 **CHAPTER 299**

AN ACT TO GIVE PRIORITY TO A LOCAL FORENSIC EXAMINATION OF A DEFENDANT WHOSE CAPACITY TO PROCEED TO TRIAL IS QUESTIONED BEFORE A STATE EVALUATION IS ORDERED AND TO MODIFY THE AUTHORITY OF THE DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO RESTRICT THE RIGHTS OF CLIENTS AT THE PRETRIAL EVALUATION CENTER AT DOROTHEA DIX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1002(b) reads as rewritten:

"(b) When the capacity of the defendant to proceed is questioned, the court shall hold a hearing to determine the defendant's capacity to proceed. If an examination is ordered pursuant to subdivisions (1) or (2) below, the hearing shall be held after the examination. Reasonable notice shall be given to the defendant and prosecutor, and the State and the defendant may introduce evidence. The court:

(1) May appoint one or more impartial medical experts, including forensic evaluators approved under rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, to examine the defendant and return a written report describing the present state of the defendant's mental health; reports so prepared are admissible at the hearing and the court may call any expert so appointed to testify at the hearing; any expert so appointed may be called to testify at the hearing by the court at the request of either party; or

(2) In the case of a defendant charged with a misdemeanor only after the examination pursuant to subsection (b)(1) of this section or at any time in the case of a defendant charged with a felony, may order the defendant to a State facility for the mentally ill for

observation and treatment for the period, not to exceed 60 days, necessary to determine the defendant's capacity to proceed; in the case of a defendant charged with a felony, if a defendant is ordered to a State facility without first having an examination pursuant to subsection (b)(1) of this section, the judge shall make a finding that an examination pursuant to this subsection would be more appropriate to determine the defendant's capacity; the sheriff shall return the defendant to the county when notified that the evaluation has been completed; the director of the facility shall direct his report on defendant's condition to the defense attorney and to the clerk of superior court, who shall bring it to the attention of the court; the report is admissible at the hearing. ~~hearing; if the report indicates that the defendant has capacity to proceed, the clerk shall direct the sheriff to return him to the county.~~"

Sec. 2. G.S. 122C-62 reads as rewritten:

"*§ 122C-62. Additional rights in 24-hour facilities.*

(a) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-61, each adult client who is receiving treatment or habilitation in a 24-hour facility keeps the right to:

(1) Send and receive sealed mail and have access to writing material, postage, and staff assistance when necessary;

(2) Contact and consult with, at his own expense and at no cost to the facility, legal counsel, private physicians, and private mental health, developmental disabilities, or substance abuse professionals of his choice; and

(3) Contact and consult with a client advocate if there is a client advocate.

The rights specified in this subsection may not be restricted by the facility and each adult client may exercise these rights at all reasonable times.

(b) Except as provided in subsections (e) and (h) of this section, each adult client who is receiving treatment or habilitation in a 24-hour facility at all times keeps the right to:

(1) Make and receive confidential telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;

(2) Receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over therapies;

(3) Communicate and meet under appropriate supervision with individuals of his own choice upon the consent of the individuals;

(4) Make visits outside the custody of the facility unless:

a. Commitment proceedings were initiated as the result of the client's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding;

b. The client was voluntarily admitted or committed to the facility while under order of commitment to a correctional facility of the Department of Correction; or

c. The client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;

A court order may expressly authorize visits otherwise prohibited by the existence of the conditions prescribed by this subdivision;

(5) Be out of doors daily and have access to facilities and equipment for physical exercise several times a week;

(6) Except as prohibited by law, keep and use personal clothing and ~~possessions;~~ possessions, unless the client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;

(7) Participate in religious worship;

(8) Keep and spend a reasonable sum of his own money;

(9) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes; and

(10) Have access to individual storage space for his private use.

(c) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-57 and G.S. 122C-59 through G.S. 122C-61, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to have access to proper adult supervision and guidance. In recognization of the minor's status as a developing individual, the minor shall be provided opportunities to enable him to mature physically, emotionally, intellectually, socially, and vocationally. In view of the physical, emotional, and intellectual immaturity of the minor, the 24-hour facility shall provide appropriate structure, supervision and control consistent with the rights given to the minor pursuant to this Article. The facility shall also, where practical, make reasonable efforts to ensure that each minor client receives treatment apart and separate from adult clients unless the treatment needs of the minor client dictate otherwise.

Each minor client who is receiving treatment or habilitation from a 24-hour facility has the right to:

(1) Communicate and consult with his parents or guardian or the agency or individual having legal custody of him;

(2) Contact and consult with, at his own expense or that of his legally responsible person and at no cost to the facility, legal counsel, private physicians, private mental health, developmental disabilities, or substance abuse professionals, of his or his legally responsible person's choice; and

(3) Contact and consult with a client advocate, if there is a client advocate.

The rights specified in this subsection may not be restricted by the facility and each minor client may exercise these rights at all reasonable times.

(d) Except as provided in subsections (e) and (h) of this section, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to:

(1) Make and receive telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;

(2) Send and receive mail and have access to writing materials, postage, and staff assistance when necessary;
(3) Under appropriate supervision, receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over school or therapies;
(4) Receive special education and vocational training in accordance with federal and State law;
(5) Be out of doors daily and participate in play, recreation, and physical exercise on a regular basis in accordance with his needs;
(6) Except as prohibited by law, keep and use personal clothing and possessions under appropriate ~~supervision;~~ supervision, unless the client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;
(7) Participate in religious worship;
(8) Have access to individual storage space for the safekeeping of personal belongings;
(9) Have access to and spend a reasonable sum of his own money; and
(10) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes.

(e) No right enumerated in subsections (b) or (d) of this section may be limited or restricted except by the qualified professional responsible for the formulation of the client's treatment or habilitation plan. A written statement shall be placed in the client's record that indicates the detailed reason for the restriction. The restriction shall be reasonable and related to the client's treatment or habilitation needs. A restriction is effective for a period not to exceed 30 days. An evaluation of each restriction shall be conducted by the qualified professional at least every seven days, at which time the restriction may be removed. Each evaluation of a restriction shall be documented in the client's record. Restrictions on rights may be renewed only by a written statement entered by the qualified professional in the client's record that states the reason for the renewal of the restriction. In the case of an adult client who has not been adjudicated incompetent, in each instance of an initial restriction or renewal of a restriction of rights, an individual designated by the client shall, upon the consent of the client, be notified of the restriction and of the reason for it. In the case of a minor client or an incompetent adult client, the legally responsible person shall be notified of each instance of an initial restriction or renewal of a restriction of rights and of the reason for it. Notification of the designated individual or legally responsible person shall be documented in writing in the client's record.

(f) The Commission may adopt rules to implement subsection (e) of this section.

(g) With regard to clients being held to determine capacity to proceed pursuant to G.S. 15A-1002 or clients in a facility for substance abuse, and notwithstanding the prior provisions of this section, the Commission may adopt rules restricting the rights set forth under ~~(b)(2) and (d)(3)~~ (b)(2), (b)(3), and (d)(3) of this section if restrictions are necessary and reasonable

in order to protect the health, safety, and welfare of the client involved or other clients.

(h) The rights stated in subdivisions (b)(2), (b)(4), (b)(5), (b)(10), (d)(3), (d)(5) and (d)(8) may be modified in a general hospital by that hospital to be the same as for other patients in that hospital; provided that any restriction of a specific client's rights shall be done in accordance with the provisions of subsection (e) of this section."

Sec. 3. This act becomes effective October 1, 1995. Section 1 applies to cases pending on or after that date, and Section 2 applies to client rights on or after that date.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

H.B. 469 **CHAPTER 300**

AN ACT TO CHANGE THE MANNER OF ELECTION OF THE DAVIDSON COUNTY BOARD OF EDUCATION FROM NONPARTISAN ELECTION AT THE TIME OF THE PRIMARY TO NONPARTISAN ELECTION AT THE TIME OF THE GENERAL ELECTION.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 115C-37, the Davidson County Board of Education shall be elected on a nonpartisan basis at the time set by G.S. 163-1 for the general election in each even-numbered year as terms expire. The election shall be conducted on a nonpartisan plurality basis, with the results determined in accordance with G.S. 163-292. Candidates shall file notices of candidacy not earlier than noon on the first Monday in June and not later than noon on the last Friday in July. The names of the candidates shall be printed on the ballot without reference to any party affiliations. Except as provided by this act, the election shall be conducted in accordance with the applicable provisions of Chapters 115C and 163 of the General Statutes.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

H.B. 491 **CHAPTER 301**

AN ACT TO PROVIDE FOR THE REEXAMINATION BY THE ENVIRONMENTAL MANAGEMENT COMMISSION OF THE CLASSIFICATION OF CERTAIN WATER SUPPLY WATERSHEDS THAT MEET THE STANDARDS OF MORE THAN ONE CLASSIFICATION AND TO RECLASSIFY THOSE WATERSHEDS ACCORDINGLY.

The General Assembly of North Carolina enacts:

Section 1. Certain water supply watersheds meet the standards of more than one classification under the water supply watershed protection

program. Therefore, the Environmental Management Commission shall reexamine, under current rules adopted by the Environmental Management Commission pursuant to G.S. 143-214.5, the classification of any water supply watershed that was classified as a WS-III water supply watershed on 1 March 1995, and that: (i) affects a land area of approximately 70,956 acres; (ii) includes within the watershed the headwaters of a river that ultimately converges with other rivers to form a major river that flows west into another state; and (iii) is located within two adjacent counties that have a combined area of 467 square miles, have a combined population of approximately 29,367, share western borders with another state, have a national park running through the counties, are both located in the same two-member State House of Representatives district and the same two-member State Senate district, and one of the adjacent counties has a point of elevation of at least 3,589 feet above sea level.

Sec. 2. Due to the definitions of certain water supply watershed classes, the reclassification of a water supply watershed to a less restrictive class will change the land area affected by the classification. Reclassification of any watershed that meets the criteria set out in Section 1 of this act shall reduce the land area affected from approximately 70,956 acres to approximately 35,490 acres.

Sec. 3. Any water supply watershed that meets the criteria set out in Section 1 of this act and is reclassified by the Environmental Management Commission as a WS-IV water supply watershed, shall not thereafter be reclassified to a more restrictive classification.

Sec. 4. If the Environmental Management Commission fails to reexamine the classification of any water supply watershed that meets the criteria of Section 1 of this act and to reclassify that water supply watershed as a WS-IV water supply watershed by 1 October 1995, then, the watershed shall automatically be reclassified as a WS-IV water supply watershed on that date.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

H.B. 575 **CHAPTER 302**

AN ACT TO REMOVE THE TOWN OF KERNERSVILLE'S LOCAL MODIFICATIONS TO G.S. 58-84-35, FORMERLY G.S. 118-7.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1106 of the 1979 Session Laws is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

H.B. 676 **CHAPTER 303**

AN ACT TO AUTHORIZE ESTABLISHMENT OF AN OUTER BANKS BEAUTIFICATION DISTRICT AND PROVIDE FOR THE LEVY AND

COLLECTION OF PROPERTY TAXES IN THE DISTRICT, SUBJECT TO APPROVAL OF THE VOTERS OF THE DISTRICT.

The General Assembly of North Carolina enacts:

Section 1. *Election on beautification district.*

The Currituck County Board of Commissioners may call an election in the Currituck Outer Banks District, described in Section 2 of this act, to submit to the voters in the district the issue of establishing the Currituck Outer Banks Beautification District and authorizing the annual levy and collection of a special ad valorem tax on all taxable property in the district to beautify the district and protect the citizens of the district by providing for the installation and maintenance of bicycle trails alongside NC Highway 12 in Currituck County. The Currituck County Board of Elections shall conduct this election, in accordance with the procedures of G.S. 163-287.

The form of the question to be presented on the ballot for an election concerning the establishment of the beautification district shall be:

"[ ] FOR [ ] AGAINST

Creation of the Currituck Outer Banks Beautification District and the levy of an ad valorem tax, not to exceed ten cents (10¢) for each one hundred dollars ($100.00) taxable valuation, to beautify the district and protect the citizens of the district by providing for bicycle trails alongside NC Highway 12 in Currituck County."

Sec. 2. *Description of district.*

The Currituck Outer Banks District consists of that part of Currituck County on the Outer Banks from Dare County to the northern boundary of The Villages of Ocean Hill subdivision in the Town of Corolla.

Sec. 3. *District established; tax levy.*

If a majority of the qualified voters voting in an election called under this act vote in favor of creating the Currituck Outer Banks Beautification District and authorizing the levy and collection of ad valorem taxes in the district, the Currituck County Board of Commissioners shall, upon receipt of a certified copy of the elections results, adopt a resolution creating the Currituck County Outer Banks Beautification District and shall file a copy of the resolution with the Clerk of Superior Court of Currituck County. Upon establishing the Currituck County Outer Banks Beautification District, the Currituck County Board of Commissioners may annually levy, on behalf of the district, an ad valorem tax on all taxable property in the district in an amount the board considers necessary to provide for the installation and maintenance of bicycle trails alongside NC Highway 12 in Currituck County, not to exceed ten cents (10¢) for each one hundred dollar ($100.00) taxable valuation of property. The proceeds of this tax shall be used only to provide for the bicycle trails alongside NC Highway 12 in Currituck County.

Sec. 4. *Nature of district; governing body.*

If created, the Currituck Outer Banks Beautification District shall be a body politic and corporate and shall have the power to provide for the bicycle trails alongside NC Highway 12 in Currituck County and do all acts reasonably necessary to fulfill this purpose. The Currituck County Board of Commissioners shall serve, ex officio, as the governing body of the district, and the officers of the Board of County Commissioners shall likewise serve

as the officers of the governing body of the district. A simple majority of the governing board constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

Sec. 5. This act applies to Currituck County only.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

H.B. 690 **CHAPTER 304**

AN ACT TO AMEND CHAPTER 1073 OF THE 1959 SESSION LAWS TO PROVIDE THAT THE SHERIFF ISSUE WEAPON PERMITS IN ASHE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1073 of the 1959 Session Laws, as further amended, is amended in Section 4 by deleting the phrase "Ashe,".

Sec. 2. Article 52A of Chapter 14 of the General Statutes shall apply to Ashe County.

Sec. 3. This act is effective upon ratification and applies to applications for permits filed on or after that date.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

H.B. 831 **CHAPTER 305**

AN ACT TO ALLOW AREA MENTAL HEALTH AUTHORITIES TO USE STATE FUNDS FOR THE USE OF MORE TYPES OF FACILITIES AND FOR FACILITIES OPERATED BY GOVERNMENTAL ENTITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-147 reads as rewritten:

"*§ 122C-147. Financing and title of area authority property.*

(a) Repealed by Session Laws 1993, c. 321, s. 220(i).

(b) Unless otherwise specified by the Secretary, State appropriations to area authorities shall be used exclusively for the operating costs of the area authority; provided however:

(1) The Secretary may specify that designated State funds may be used by area authorities (i) for the purchase, alteration, improvement, or rehabilitation of real estate to be used as a ~~24-hour and day~~ facility or (ii) in contracting with a private, nonprofit corporation or with another governmental entity that operates ~~24-hour and day~~ facilities for the mentally ill, developmentally disabled, or substance abusers and according to the terms of the contract between the area authority and the private, nonprofit ~~corporation,~~ corporation or with the governmental entity, for the purchase, alteration, improvement, rehabilitation of real estate or, to make a

lump sum down payment or periodic payments on a real property mortgage in the name of the private, nonprofit ~~corporation.~~ corporation or governmental entity.

(2) Upon cessation of the use of the ~~24-hour and day~~ facility by the area authority, if operated by the area authority, or upon termination, default, or nonrenewal of the contract if operated by a contractual agency, the Department shall be reimbursed in accordance with rules adopted by the Secretary for the Department's participation in the purchase of the ~~24-hour and day~~ facility.

(c) All real property purchased for use by the area authority shall be provided by local or federal funds unless otherwise allowed under subsection (b) of this ~~section.~~ section or by specific capital funds appropriated by the General Assembly. The title to this real property and the authority to acquire it is held by the county where the property is located. The authority to hold title to real property and the authority to acquire it, including the area authority's authority to finance its acquisition by an installment contract under G.S. 160A-20, may be held by the area authority or by the contracting governmental entity with the approval of the board or boards of commissioners of all the counties that comprise the area authority. The approval of a board of county commissioners shall be by resolution of the board and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property by the area authority. Real property may not be acquired by means of an installment contract under G.S. 160A-20 unless the Local Government Commission has approved the acquisition. No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this subsection, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this subsection.

(d) The area authority may lease real property.

(e) Equipment necessary for the operation of the area authority may be obtained with local, State, federal, or donated funds, or a combination of these.

(f) The area authority may acquire or lease personal property. An acquisition may be accomplished by an installment contract under G.S. 160A-20 or by a lease-purchase agreement. An area authority may not acquire personal property by means of an installment contract under G.S. 160A-20 without the approval of the board or boards of commissioners of all the counties that comprise the area authority. The approval of a board of county commissioners shall be by resolution of the board and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property by the area authority. The area authority may not acquire personal property by means of an installment contract under G.S. 160A-20 without the approval of the Local Government Commission, when required by that statute. No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this subsection,

and the taxing power of a unit of local government is not and ~~may~~ shall not be pledged directly or indirectly to secure any moneys due under a contract authorized by this subsection. Title to personal property may be held by the area authority.

(g) All area authority funds shall be spent in accordance with the rules of the Secretary. Failure to comply with the rules is grounds for the Secretary to stop participation in the funding of the particular program. The Secretary may withdraw funds from a specific program of services not being administered in accordance with an approved plan and budget after written notice and subject to an appeal as provided by G.S. 122C-145 and Chapter 150B of the General Statutes.

(h) Notwithstanding subsection (b) of this section and in addition to the purposes listed in that subsection, the funds allocated by the Secretary for services for members of the class identified in Willie M., et al. vs. Hunt, et al. (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property owned or to be owned by a nonprofit corporation or by another governmental entity and used or to be used as a facility.

(i) Notwithstanding subsection (c) of this section and in addition to the purposes listed in that subsection, funds allocated by the Secretary for services for members of the class identified in Willie M., et al. vs. Hunt, et al. (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property used by an area authority as long as the title to the real property is vested in the county where the property is located or is vested in another governmental entity. If the property ceases to be used in accordance with the annual plan, the unamortized part of funds spent under this subsection for the purchase, alteration, improvement, or rehabilitation of real property shall be returned to the Department, in accordance with the rules of the Secretary.

(j) Notwithstanding subsection (c) of this section the area authority, with the approval of the Secretary, may use local funds for the alteration, improvement, and rehabilitation of real property owned by a nonprofit corporation or by another governmental entity under contract with the area authority and used or to be used as a ~~24-hour and day~~ facility. Prior to the use of county appropriated funds for this purpose, the area authority ~~must~~ shall obtain consent of the board or boards of commissioners of all the counties ~~which~~ that comprise the area authority. The consent shall be by resolution of the affected board or boards of county commissioners and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property."

Sec. 2. This act becomes effective July 1, 1995, and applies to funds used for facilities on or after that date and to contracts entered into on or after that date.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

S.B. 543 **CHAPTER 306**

AN ACT TO PROVIDE THAT SWORN AND CERTIFIED JAILERS AND TELECOMMUNICATORS EMPLOYED BY THE CATAWBA COUNTY SHERIFF'S DEPARTMENT ARE ELIGIBLE TO RECEIVE THE BENEFITS AFFORDED TO LAW ENFORCEMENT OFFICERS THROUGH THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. For the purposes of benefits afforded on account of membership in the Local Governmental Employees' Retirement System, a "law enforcement officer" as defined in G.S. 128-21(11b) and a "law-enforcement officer" as defined in G.S. 143-166.50(a)(3) shall include an employee of the Catawba Sheriff's Department serving as a sworn and certified jailer or telecommunicator.

Sec. 2. This act is effective upon ratification and applies only as to persons who are employees of the Catawba County Sheriff's Department enrolled in the North Carolina Local Governmental Employees' Retirement System on that date.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

S.B. 568 **CHAPTER 307**

AN ACT TO PROVIDE THAT THE DAVIE COUNTY BOARD OF EDUCATION SHALL TAKE OFFICE ON THE FIRST MONDAY IN JULY FOLLOWING THEIR ELECTION.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 1242, Session Laws of 1967, as amended by Chapter 5 of the Session Laws of 1979, is amended by deleting the words: "first Monday in December following their election", and inserting in lieu thereof the words "first Monday in July following their election."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

H.B. 127 **CHAPTER 308**

AN ACT TO LIMIT THE LIABILITY OF LANDOWNERS TO MEMBERS OF THE PUBLIC ENTERING THE LAND FOR EDUCATIONAL AND RECREATIONAL PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 38A.

"Landowner Liability.

"§ 38A-1. *Purpose.*

The purpose of this Chapter is to encourage owners of land to make land and water areas available to the public at no cost for educational and recreational purposes by limiting the liability of the owner to persons entering the land for those purposes.

"§ 38A-2. *Definitions.*

The following definitions shall apply throughout this Chapter, unless otherwise specified:

(1) 'Charge' means a price or fee asked for services, entertainment, recreation performed, or products offered for sale on land or in return for an invitation or permission to enter upon land, except as otherwise excluded in this Chapter.

(2) 'Educational purpose' means any activity undertaken as part of a formal or informal educational program, and viewing historical, natural, archaeological, or scientific sites.

(3) 'Land' means real property, land, and water, but does not mean a dwelling and the property immediately adjacent to and surrounding such dwelling that is generally used for activities associated with occupancy of the dwelling as a living space.

(4) 'Owner' means any individual or nongovernmental legal entity that has any fee, leasehold interest, or legal possession, and any employee or agent of such individual or nongovernmental legal entity.

(5) 'Recreational purpose' means any activity undertaken for recreation, exercise, education, relaxation, refreshment, diversion, or pleasure.

"§ 38A-3. *Exclusions.*

For purposes of this act, the term 'charge' does not include:

(1) Any contribution in kind, services or cash contributed by a person, legal entity, nonprofit organization, or governmental entity other than the owner, whether or not sanctioned or solicited by the owner, the purpose of which is to (i) remedy damage to land caused by educational or recreational use; or (ii) provide warning of hazards on, or remove hazards from, land used for educational or recreational purposes.

(2) Unless otherwise agreed in writing or otherwise provided by the State or federal tax codes, any property tax abatement or relief received by the owner from the State or local taxing authority in exchange for the owner's agreement to open the land for educational or recreational purposes.

"§ 38A-4. *Limitation of liability.*

Except as specifically recognized by or provided for in this act, an owner of land who either directly or indirectly invites or permits without charge any person to use such land for educational or recreational purposes owes the person the same duty of care that he owes a trespasser, except nothing in this act shall be construed to limit or nullify the doctrine of attractive nuisance and the owner shall inform direct invitees of artificial or unusual hazards of which the owner has actual knowledge. This section does not

apply to an owner who invites or permits any person to use land for a purpose for which the land is regularly used and for which a price or fee is usually charged even if it is not charged in that instance, or to an owner whose purpose in extending an invitation or granting permission is to promote a commercial enterprise."

Sec. 2. Within 45 days after ratification of this act, the Department of Public Instruction shall notify, in writing, each local board of education of this act, including its application to school activities held on premises covered by this act and its effect on students, parents, teachers, and others participating in those activities on behalf of the school.

Sec. 3. Section 1 of this act becomes effective October 1, 1995, and applies to all causes of action arising after that date. The remainder of this act is effective upon ratification. All insurance policies providing liability coverage for land, as defined in G.S. 38A-2(3), covered by Section 1 of this act shall be rerated on the anniversary dates of the policies next following the effective date of Section 1 of this act, to reflect the added limitation of liability contained in G.S. 38A-4.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

H.B. 730 **CHAPTER 309**

AN ACT TO PREVENT FRIVOLOUS MEDICAL MALPRACTICE ACTIONS BY REQUIRING THAT EXPERT WITNESSES IN MEDICAL MALPRACTICE CASES HAVE APPROPRIATE QUALIFICATIONS TO TESTIFY ON THE STANDARD OF CARE AT ISSUE AND TO REQUIRE EXPERT WITNESS REVIEW AS A CONDITION OF FILING A MEDICAL MALPRACTICE ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 8C-1, Rule 702, of the General Statutes reads as rewritten:

"Rule 702. *Testimony by experts.*

(a) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion.

(b) In a medical malpractice action as defined in G.S. 90-21.11, a person shall not give expert testimony on the appropriate standard of health care as defined in G.S. 90-21.12 unless the person is a licensed health care provider in this State or another state and meets the following criteria:

(1) If the party against whom or on whose behalf the testimony is offered is a specialist, the expert witness must:

a. Specialize in the same specialty as the party against whom or on whose behalf the testimony is offered; or

b. Specialize in a similar specialty which includes within its specialty the performance of the procedure that is the subject of the complaint and have prior experience treating similar patients.

(2) During the year immediately preceding the date of the occurrence that is the basis for the action, the expert witness must have devoted a majority of his or her professional time to either or both of the following:

a. The active clinical practice of the same health profession in which the party against whom or on whose behalf the testimony is offered, and if that party is a specialist, the active clinical practice of the same specialty or a similar specialty which includes within its specialty the performance of the procedure that is the subject of the complaint and have prior experience treating similar patients; or

b. The instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession in which the party against whom or on whose behalf the testimony is offered, and if that party is a specialist, an accredited health professional school or accredited residency or clinical research program in the same specialty.

(c) Notwithstanding subsection (b) of this section, if the party against whom or on whose behalf the testimony is offered is a general practitioner, the expert witness, during the year immediately preceding the date of the occurrence that is the basis for the action, must have devoted a majority of his or her professional time to either or both of the following:

(1) Active clinical practice as a general practitioner; or

(2) Instruction of students in an accredited health professional school or accredited residency or clinical research program in the general practice of medicine.

(d) Notwithstanding subsection (b) of this section, a physician who qualifies as an expert under subsection (a) of this Rule and who by reason of active clinical practice or instruction of students has knowledge of the applicable standard of care for nurses, nurse practitioners, certified registered nurse anesthetists, certified registered nurse midwives, physician assistants, or other medical support staff may give expert testimony in a medical malpractice action with respect to the standard of care of which he is knowledgeable of nurses, nurse practitioners, certified registered nurse anesthetists, certified registered nurse midwives, physician assistants licensed under Chapter 90 of the General Statutes, or other medical support staff.

(e) Upon motion by either party, a resident judge of the superior court in the county or judicial district in which the action is pending may allow expert testimony on the appropriate standard of health care by a witness who does not meet the requirements of subsection (b) or (c) of this Rule, but who is otherwise qualified as an expert witness, upon a showing by the movant of extraordinary circumstances and a determination by the court that the motion should be allowed to serve the ends of justice.

(f) In an action alleging medical malpractice, an expert witness shall not testify on a contingency fee basis.

(g) This section does not limit the power of the trial court to disqualify an expert witness on grounds other than the qualifications set forth in this section.

(h) Notwithstanding subsection (b) of this section, in a medical malpractice action against a hospital, or other health care or medical facility, a person may give expert testimony on the appropriate standard of care as to administrative or other nonclinical issues if the person has substantial knowledge, by virtue of his or her training and experience, about the standard of care among hospitals, or health care or medical facilities, of the same type as the hospital, or health care or medical facility, whose actions or inactions are the subject of the testimony situated in the same or similar communities at the time of the alleged act giving rise to the cause of action."

Sec. 2. G.S. 1A-1, Rule 9, of the General Statutes is amended by adding a new subsection to read:

"(j) Medical malpractice. -- Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

(1) The pleading specifically asserts that the medical care has been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care has been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident judge of the superior court of the county in which the cause of action arose may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension."

Sec. 3. Section 2 of this act is not intended, and shall not be construed, to enlarge or diminish the doctrine of res ipsa loquitur in medical malpractice claims.

Sec. 4. This act becomes effective January 1, 1996, and applies to actions filed on or after that date.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

S.B. 300 **CHAPTER 310**

AN ACT TO AUTHORIZE THE DEPARTMENT OF COMMERCE TO PLEDGE BLOCK GRANT FUNDS AS LOAN GUARANTEES PURSUANT TO THE HOUSING AND COMMUNITY DEVELOPMENT ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-431(d) reads as rewritten:

"(d) The Department of Commerce, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual and may comply with the terms, conditions, and limitations of such grants in order to accomplish the Department's purposes. Grant funds shall be expended pursuant to the Executive Budget Act. In addition, the Department shall have the following powers and duties with respect to its duties in administering federal programs:

(1) To negotiate, collect, and pay reasonable fees and charges regarding the making or servicing of grants, loans, or other evidences of indebtedness.

(2) To establish and revise by regulation, in accordance with Chapter 150B of the General Statutes, schedules of reasonable rates, fees, or charges for services rendered, including but not limited to, reasonable fees or charges for servicing applications. Schedules of rates, fees, or charges may vary according to classes of service, and different schedules may be adopted for public entities, nonprofit entities, private for-profit entities, and individuals.

(3) To pledge current and future federal fund appropriations to the State from the Community Development Block Grant (CDBG) program for use as loan guarantees in accordance with the provisions of the Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700, et seq., authorized by the Housing and Community Development Act of 1974 and amendments thereto. The Department may enter into loan guarantee agreements with authorized State and federal agencies and other necessary parties in order to carry out its duties under this subdivision. In making loan guarantees authorized under this subdivision, the Department shall ensure that apportionment of the risks involved in pledging future federal funds in accordance with State policies and priorities for financial support of categories of assistance is made primarily against the category from which the loan guarantee originally derived. A pledge of future CDBG funds under this subdivision is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subdivision does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes, nor may pledges exceed twice the amount of annual CDBG funds.

Prior to issuing a Section 108 Loan Guarantee agreement, the Department of Commerce must make the following findings:

a. The minimum size of the Section 108 Loan Guarantee is seven hundred fifty thousand dollars ($750,000) and the maximum size is five million dollars ($5,000,000) per project.

b. The Section 108 Loan Guarantee cannot constitute more than fifty percent (50%) of total project costs.

c. The project has twenty-five percent (25%) equity from the corporation, partnership, or sponsoring party.

d. The project has the personal guarantee of any person owning ten percent (10%) or more of the corporation, partnership, or sponsoring entity. Collateral on the loan must be sufficient to cover outstanding debt obligations.

e. The project has sufficient cash flow from operations for debt service to repay the Section 108 loan.

f. The project meets all underwriting and eligibility requirements of the North Carolina Section 108 Guarantee Program Guidelines and of the Department of Housing and Urban Development regulations, except that projects involving hotels, motels, private recreational facilities, private entertainment facilities, and convention centers are ineligible for Section 108 loan guarantees.

The Department shall create a loan loss reserve fund as additional security for loans guaranteed under this section and may deposit federal program income or other funds governed by this section into the loan loss reserve fund. The Department shall maintain a balance in the reserve fund of no less than ten percent (10%) of the outstanding indebtedness secured by Section 108 loan guarantees."

Sec. 2. G.S. 153A-376 is amended by adding the following new subsection to read:

"(e) Any county may receive and dispense funds from the Community Development Block Grant Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700 et seq., either through application to the North Carolina Department of Commerce or directly from the federal government, in accordance with State and federal laws governing these funds. Any county that receives these funds directly from the federal government may pledge current and future CDBG funds for use as loan guarantees in accordance with State and federal laws governing these funds. Any county that has pledged current or future CDBG funds for use as loan guarantees prior to the enactment of this subsection is authorized to have taken such action. A pledge of future CDBG funds under this subsection is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subsection does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes."

Sec. 3. G.S. 160A-456 is amended by adding the following new subsection to read:

"(d1) Any city may receive and dispense funds from the Community Development Block Grant Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700 et seq., either through application to the North Carolina Department of Commerce or directly from the federal government, in accordance with State and federal laws governing these funds. Any city that receives these funds directly from the federal government may pledge

current and future CDBG funds for use as loan guarantees in accordance with State and federal laws governing these funds. Any city that has pledged current or future CDBG funds for use as loan guarantees prior to the enactment of this subsection is authorized to have taken such action. A pledge of future CDBG funds under this subsection is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subsection does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes."

Sec. 4. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 21st day of June, 1995.

S.B. 632 **CHAPTER 311**

AN ACT TO AMEND THE VITAL RECORDS LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-26 is repealed.

Sec. 2. Chapter 130A of the General Statutes is amended by adding the following new section to read:

"*§ 130A-26A. Violations of Article 4.*

(a) A person who commits any of the following acts shall be guilty of a Class 1 misdemeanor:

(1) Willfully and knowingly makes any false statement in a certificate, record, or report required by Article 4 of this Chapter;

(2) Removes or permits the removal of a dead body of a human being without authorization provided in Article 4 of this Chapter;

(3) Refuses or fails to furnish correctly any information in the person's possession or furnishes false information affecting a certificate or record required by Article 4 of this Chapter;

(4) Fails, neglects, or refuses to perform any act or duty required by Article 4 of this Chapter or by the instructions of the State Registrar prepared under authority of the Article.

(5) Charges a fee for performing any act or duty required by Article 4 of this Chapter or by the State Registrar pursuant to Article 4 of this Chapter, other than fees specifically authorized by law.

(b) A person who commits any of the following acts shall be guilty of a Class I felony:

(1) Willfully and knowingly makes any false statement in an application for a certified copy of a vital record, or who willfully and knowingly supplies false information intending that the information be used in the obtaining of any copy of a vital record;

(2) Without lawful authority and with the intent to deceive makes, counterfeits, alters, amends, or mutilates a certificate, record, or

report required by Article 4 of this Chapter or a certified copy of the certificate, record, or report;

(3) Willfully and knowingly obtains, possesses, sells, furnishes, uses, or attempts to use for any purpose of deception, a certificate, record, or report required by Article 4 of this Chapter or a certified copy of the certificate, record, or report, which is counterfeited, altered, amended, or mutilated, or which is false in whole or in part or which relates to the birth of another person, whether living or deceased;

(4) When employed by the Vital Records Section of the Department or designated under Article 4 of this Chapter, willfully and knowingly furnishes or processes a certificate of birth, death, marriage, or divorce, or certified copy of a certificate of birth, death, marriage, or divorce with the knowledge or intention that it be used for the purposes of deception;

(5) Without lawful authority possesses a certificate, record, or report required by Article 4 of this Chapter or a certified copy of the certificate, record, or report knowing that it was stolen or otherwise unlawfully obtained;

(6) Willfully alters, except as provided by G.S. 130A-118, or falsifies a certificate or record required by Article 4 of this Chapter; or willfully alters, falsifies, or changes a photocopy, certified copy, extract copy, or any document containing information obtained from an original or copy of a certificate or record required by Article 4 of this Chapter; or willfully makes, creates, or uses any altered, falsified or changed record, reproduction, copy or document for the purpose of attempting to prove or establish for any purpose whatsoever any matter purported to be shown on it;

(7) Without lawful authority, manufactures or possesses the seal of: (i) the Vital Records Section, (ii) a county register of deeds, or (iii) a county health department, or without lawful authority, manufactures or possesses a reproduction or a counterfeit copy of the seal;

(8) Without lawful authority prepares or issues any certificate which purports to be an official certified copy of a vital record;

(9) Without lawful authority, manufactures or possesses Vital Records Section, county register of deeds, or county health department vital records forms or safety paper used to certify births, deaths, marriages, and divorces, or reproductions or counterfeit copies of the forms or safety paper; or

(10) Willfully and knowingly furnishes a certificate of birth or certified copy of a record of birth with the intention that it be used by an unauthorized person or for an unauthorized purpose."

Sec. 3. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 21st day of June, 1995.

S.B. 651 **CHAPTER 312**

AN ACT TO REQUIRE THE PERMANENT IDENTIFICATION OF A DEAD BODY.

The General Assembly of North Carolina enacts:

Section 1. G.S. Chapter 90 is amended by adding the following new section to read:

"*G.S. 90-210.29A. Identification of bodies before burial or cremation.*

The funeral director or person otherwise responsible for the final disposition of a dead body shall, prior to the interment or entombment of the dead body, affix on the ankle or wrist of the dead body, or, if cremated, on the inside of the vessel containing the remains of the dead body, a tag of durable, noncorroding material permanently marked with the name of the deceased, the date of death, the social security number of the deceased, the county and state of death, and the site of interment or entombment."

Sec. 2. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 21st day of June, 1995.

S.B. 682 **CHAPTER 313**

AN ACT TO PROVIDE FOR THE APPOINTMENT OF STANDBY GUARDIANS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 35A of the General Statutes is amended by adding a new Subchapter to read:

"SUBCHAPTER IV. STANDBY GUARDIANS FOR MINOR CHILDREN.

"ARTICLE 21.

"Standby Guardianship.

"§ *35A-1370. Definitions.*

For purposes of this Article:

(1) 'Alternate standby guardian' means a person identified in either a petition or designation to become the guardian of the person or, when appropriate, the general guardian of a minor child, pursuant to G.S. 35A-1372 or to G.S. 35A-1373, when the person identified as the standby guardian and the designator or petitioner has identified an alternate standby guardian.

(2) 'Attending physician' means the physician who has primary responsibility for the treatment and care of the parent or legal guardian. When more than one physician shares this responsibility, or when a physician is acting on the primary physician's behalf, any such physician may act as the attending physician pursuant to this section. When no physician has this responsibility, a physician who is familiar with the petitioner's medical condition may act as the attending physician pursuant to this Article.

(3) 'Debilitation' means a chronic and substantial inability, as a result of a physically debilitating illness, disease, or injury, to care for one's minor child.

(4) 'Designation' means a written document voluntarily executed by the designator pursuant to this Article.

(5) 'Designator' means a person who suffers from a progressive chronic illness or an irreversible fatal illness and who is the biological or adoptive parent, the guardian of the person, or the general guardian of a minor child. A designation under this Article may be made on behalf of a designator by the guardian of the person or the general guardian of the designator.

(6) 'Determination of debilitation' means a written determination made by the attending physician which contains the physician's opinion to a reasonable degree of medical certainty regarding the nature, cause, extent, and probable duration of the debilitation of the petitioner or designator.

(7) 'Determination of incapacity' means a written determination made by the attending physician which contains the physician's opinion to a reasonable degree of medical certainty regarding the nature, cause, extent, and probable duration of the incapacity of the petitioner or designator.

(8) 'Incapacity' means a chronic and substantial inability, as a result of mental or organic impairment, to understand the nature and consequences of decisions concerning the care of one's minor child, and a consequent inability to make these decisions.

(9) 'Minor child' means an unemancipated child or children under the age of 18 years.

(10) 'Petitioner' means a person who suffers from a progressive chronic illness or an irreversible fatal illness and who is the biological parent, the adoptive parent, the guardian of the person, or the general guardian of a minor child. A proceeding under this Article may be initiated and pursued on behalf of a petitioner by the guardian of the person, the general guardian of the petitioner, or by a person appointed by the clerk of superior court pursuant to Rule 17 of the Rules of Civil Procedure as guardian ad litem for the purpose of initiating and pursuing a proceeding under this Article on behalf of a petitioner.

(11) 'Standby guardian' means a person appointed pursuant to G.S. 35A-1372 or designated pursuant to G.S. 35A-1373 to become the guardian of the person or, when appropriate, the general guardian of a minor child upon the death of a petitioner or designator, upon a determination of debilitation or incapacity of a petitioner or designator, or with the consent of a petitioner or designator.

(12) 'Triggering event' means an event stated in the designation executed or order entered under this Article which empowers the standby guardian, or the alternate standby guardian, if one is identified and the standby guardian is unwilling or unable to serve, to assume the duties of the office, which event may be the

death of a petitioner or designator, incapacity of a petitioner or designator, debilitation of a petitioner or designator with the petitioner's or designator's consent, or the consent of the petitioner or designator, whichever occurs first.

"*§ 35A-1370.1. Jurisdiction; limits.*

Notwithstanding the provisions of Subchapter II of this Chapter, the clerk of superior court shall have original jurisdiction for the appointment of a standby guardian for a minor child under this Article. Provided that the clerk shall have no jurisdiction, no standby guardian may be appointed under this Article, and no designation may become effective under this Article when a district court has assumed jurisdiction over the minor child in an action under Chapter 50 of the General Statutes or in an abuse, neglect, or dependency proceeding under Subchapter XI of Chapter 7A of the General Statutes, or when a court in another state has assumed such jurisdiction under a comparable statute.

"*§ 35A-1371. Standby guardianship; applicability.*

This Article provides two methods for appointing a standby guardian: by petition pursuant to G.S. 35A-1372 or by designation pursuant to G.S. 35A-1373. If a standby guardian is unwilling or unable to serve as a standby guardian and the designator or petitioner has identified an alternate standby guardian, then the alternate standby guardian shall become the standby guardian, upon the same conditions as set forth in this Article.

"*§ 35A-1372. Appointment by petition of standby guardian; petition, notice, hearing, order.*

(a) A petitioner shall commence a proceeding under this Article for the appointment of a standby guardian of a minor child by filing a petition with the clerk of superior court of the county in which the minor child resides or is domiciled at the time of filing. A petition filed by a guardian of the person or a general guardian of the minor child who was appointed under this Chapter shall be treated as a motion in the cause in the original guardianship, but the provisions of this section shall otherwise apply.

(b) A petition for the judicial appointment of a standby guardian of a minor child shall:

(1) Identify the petitioner, the minor child, the person designated to be the standby guardian, and the person designated to be the alternate standby guardian, if any;

(2) State that the authority of the standby guardian is to become effective upon the death of the petitioner, upon the incapacity of the petitioner, upon the debilitation of the petitioner with the consent of the petitioner, or upon the petitioner's signing of a written consent stating that the standby guardian's authority is in effect, whichever occurs first;

(3) State that the petitioner suffers from a progressively chronic illness or an irreversible fatal illness, and the basis for such a statement, such as the date and source of a medical diagnosis, without requiring the identification of the illness in question;

(4) State whether there are any lawsuits, in this or any other jurisdiction, involving the minor child and, if so, identify the

parties, the case numbers, and the states and counties where filed; and

(5) Be verified by the petitioner in front of a notary public or another person authorized to administer oaths.

(c) A copy of the petition and written notice of the time, date, and place set for a hearing shall be served upon any biological or adoptive parent of the minor child who is not a petitioner, and on any other person the clerk may direct, including the minor child. Service shall be made pursuant to Rule 4 of the Rules of Civil Procedure, unless the clerk directs otherwise. When service is made by the sheriff, the sheriff shall make such service without demanding his fees in advance. Parties may waive their right to notice of the hearing and the clerk may proceed to consider the petition upon determining that all necessary parties are before the court and agree to have the petition considered.

(d) If at or before the hearing any parent entitled to notice under subsection (c) of this section presents to the clerk a written claim for custody of the minor child, the clerk shall stay further proceedings under this Article pending the filing of a complaint for custody of the minor child under Chapter 50 of the General Statutes and, upon the filing of such a complaint, shall dismiss the petition. If no such complaint is filed within 30 days after the claim is presented, the clerk shall conduct a hearing and enter an order as provided for in this section.

(e) The petitioner's appearance at the hearing shall not be required if the petitioner is medically unable to appear, unless the clerk determines that the petitioner is able with reasonable accommodation to appear and that the interests of justice require that the petitioner be present at the hearing.

(f) At the hearing, the clerk shall receive evidence necessary to determine whether the requirements of this Article for the appointment of a standby guardian have been satisfied. If the clerk finds that the petitioner suffers from a progressive chronic illness or an irreversible fatal illness, that the best interests of the minor child will be promoted by the appointment of a standby guardian of the person or general guardian, and that the standby guardian and the alternate standby guardian, if any, are fit to serve as guardian of the person or general guardian of the minor child, the clerk shall enter an order appointing the standby guardian named in the petition as standby guardian of the person or standby general guardian of the minor child and shall issue letters of appointment to the standby guardian. The order may also appoint the alternate standby guardian named in the petition as the alternate standby guardian of the person or alternate general guardian of the minor child in the event that the person named as standby guardian is unwilling or unable to serve as standby guardian and shall provide that, upon a showing of that unwillingness or inability, letters of appointment will be issued to the alternate standby guardian.

(g) Letters of appointment issued pursuant to this section shall state that the authority of the standby guardian or alternate standby guardian of the person or the standby guardian or alternate standby general guardian is effective upon the receipt by the guardian of a determination of the death of the petitioner, upon receipt of a determination of the incapacity of the petitioner, upon receipt of a determination of the debilitation of the petitioner

and the petitioner's consent, whichever occurs first, and shall also provide that the authority of the standby guardian may earlier become effective upon written consent of the petitioner pursuant to subsection (l) of this section.

(h) If at any time prior to the commencement of the authority of the standby guardian the clerk, upon motion of the petitioner or any person entitled to notice under subsection (c) of this section and after hearing, finds that the requirements of subsection (f) of this section are no longer satisfied, the clerk shall rescind the order.

(i) Where the order provides that the authority of the standby guardian is effective upon receipt of a determination of the death of the petitioner, the standby guardian's authority shall commence upon the standby guardian's receipt of proof of death of the petitioner such as a copy of a death certificate or a funeral home receipt. The standby guardian shall file the proof of death in the office of the clerk who entered the order within 90 days of the date of the petitioner's death or the standby guardian's authority may be rescinded by the clerk.

(j) Where the order provides that the authority of the standby guardian is effective upon receipt of a determination of the incapacity of the petitioner, the standby guardian's authority shall commence upon the standby guardian's receipt of a copy of the determination of incapacity made pursuant to G.S. 35A-1374. The standby guardian shall file a copy of the determination of incapacity in the office of the clerk who entered the order within 90 days of the date of the receipt of such determination, or the standby guardian's authority may be rescinded by the clerk.

(k) Where the order provides that the authority of the standby guardian is effective upon receipt of a determination of the debilitation of the petitioner, the standby guardian's authority shall commence upon the standby guardian's receipt of a copy of the determination of debilitation made pursuant to G.S. 35A-1374, as well as a written consent signed by the petitioner. The standby guardian shall file a copy of the determination of debilitation and the written consent in the office of the clerk who entered the order within 90 days of the date of the receipt of such determination, or the standby guardian's authority may be rescinded by the clerk.

(l) Notwithstanding subsections (i), (j), and (k) of this section, a standby guardian's authority shall commence upon the standby guardian's receipt of the petitioner's written consent to such commencement, signed by the petitioner in the presence of two witnesses who are at least 18 years of age, other than the standby guardian or the alternate standby guardian, who shall also sign the writing. Another person may sign the written consent on the petitioner's behalf and at the petitioner's direction if the petitioner is physically unable to do so, provided such consent is signed in the presence of the petitioner and the two witnesses. The standby guardian shall file the written consent in the office of the clerk who entered the order within 90 days of the date of such written consent, or the standby guardian's authority may be rescinded by the clerk.

(m) The petitioner may revoke a standby guardianship created under this section by executing a written revocation, filing it in the office of the clerk who entered the order, and promptly providing the standby guardian with a copy of the revocation.

(n) A person appointed standby guardian pursuant to this section may at any time before the commencement of the person's authority renounce the appointment by executing a written renunciation and filing it with the clerk who entered the order and promptly providing the petitioner with a copy of the renunciation. Upon the filing of a renunciation, the clerk shall issue letters of appointment to the alternate standby guardian, if any.

"§ 35A-1373. Appointment by written designation; form.

(a) A designator may designate a standby guardian by means of a written designation, signed by the designator in the presence of two witnesses at least 18 years of age, other than the standby guardian or alternate standby guardian, who shall also sign the writing. Another person may sign the written designation on the behalf of and at the direction of the designator if the designator is physically unable to do so, provided that the designation is signed in the presence of the designator and the two witnesses.

(b) A designation of a standby guardian shall identify the designator, the minor child, the person designated to be the standby guardian, and the person designated to be the alternate standby guardian, if any, and shall indicate that the designator intends for the standby guardian or the alternate standby guardian to become the minor child's guardian in the event that the designator either:

(1) Becomes incapacitated;

(2) Becomes debilitated and consents to the commencement of the standby guardian's authority;

(3) Dies prior to the commencement of a judicial proceeding to appoint a guardian of the person or general guardian of a minor child; or

(4) Consents to the commencement of the standby guardian's authority.

(c) The authority of the standby guardian under a designation shall commence upon the same conditions as set forth in G.S. 35A-1372(i) through (l).

(d) The standby guardian or, if the standby guardian is unable or unwilling to serve, the alternate standby guardian shall commence a proceeding under this Article to be appointed guardian of the person or general guardian of the minor child by filing a petition with the clerk of superior court of the county in which the minor child resides or is domiciled at the time of filing. The petition shall be filed after receipt of either:

(1) A copy of a determination of incapacity made pursuant to G.S. 35A-1374;

(2) A copy of a determination of debilitation made pursuant to G.S. 35A-1374 and a copy of the designator's written consent to such commencement;

(3) A copy of the designator's written consent to such commencement, made pursuant to G.S. 35A-1372(l); or

(4) Proof of death of the designator, such as a copy of a death certificate or a funeral home receipt.

(e) The standby guardian shall file a petition pursuant to subsection (d) of this section within 90 days of the date of the commencement of the standby guardian's authority under this section, or the standby guardian's

authority shall lapse after the expiration of those 90 days, to recommence only upon filing of the petition.

(f) A petition filed pursuant to subsection (d) of this section shall:

(1) Append the written designation of such person as standby guardian; and

(2) Append a copy of either (i) the determination of incapacity of the designator; (ii) the determination of debilitation of the designator and the written consent of the designator; (iii) the designator's consent; or (iv) proof of death of the designator, such as a copy of a death certificate or a funeral home receipt; and

(3) If the petition is by a person designated as an alternate standby guardian, state that the person designated as the standby guardian is unwilling or unable to act as standby guardian, and the basis for that statement; and

(4) State whether there are any lawsuits, in this State or any other jurisdiction, involving the minor child and, if so, identify the parties, the case numbers, and the states and counties where filed; and

(5) Be verified by the standby guardian or alternate standby guardian in front of a notary public or another person authorized to administer oaths.

(g) A copy of the petition and written notice of the time, date, and place set for a hearing shall be served upon any biological or adoptive parent of the minor child who is not a designator, and on any other person the clerk may direct, including the minor child. Service shall be made pursuant to Rule 4 of the Rules of Civil Procedure, unless the clerk directs otherwise. When service is made by the sheriff, the sheriff shall make such service without demanding his fees in advance. Parties may waive their right to notice of the hearing and the clerk may proceed to consider the petition upon determining that all necessary parties are before the court and agree to have the petition considered.

(h) If at or before the hearing any parent entitled to notice under subsection (c) of this section presents to the clerk a written claim for custody of the minor child, the clerk shall stay further proceedings under this Article pending the filing of a complaint for custody of the minor child under Chapter 50 of the General Statutes and, upon the filing of such a complaint, shall dismiss the petition. If no such complaint is filed within 30 days after the claim is presented, the clerk shall conduct a hearing and enter an order as provided for in this section.

(i) At the hearing, the clerk shall receive evidence necessary to determine whether the requirements of this section have been satisfied. The clerk shall enter an order appointing the standby guardian or alternate standby guardian as guardian of the person or general guardian of the minor child if the clerk finds that:

(1) The person was duly designated as a standby guardian or alternate standby guardian;

(2) That (i) there has been a determination of incapacity; (ii) there has been a determination of debilitation and the designator has consented to the commencement of the standby guardian's

authority; (iii) the designator has consented to that commencement; or (iv) the designator has died, such information coming from a document, such as a copy of a death certificate or a funeral home receipt;

(3) That the best interests of the minor child will be promoted by the appointment of the person designated as standby guardian or alternate standby guardian as guardian of the person or general guardian of the minor child;

(4) That the standby guardian or alternate standby guardian is fit to serve as guardian of the person or general guardian of the minor child; and

(5) That, if the petition is by a person designated as an alternate standby guardian, the person designated as standby guardian is unwilling or unable to serve as standby guardian.

(j) The designator may revoke a standby guardianship created under this section by:

(1) Notifying the standby guardian in writing of the intent to revoke the standby guardianship prior to the filing of the petition under this section; or

(2) Where the petition has already been filed, by executing a written revocation, filing it in the office of the clerk with whom the petition was filed, and promptly providing the standby guardian with a copy of the written revocation.

"*§ 35A-1374. Determination of incapacity or debilitation.*

(a) If requested by the petitioner, designator, or standby guardian, an attending physician shall make a determination regarding the incapacity or debilitation of the petitioner or designator for purposes of this Article.

(b) A determination of incapacity or debilitation shall:

(1) Be made by the attending physician to a reasonable degree of medical certainty;

(2) Be in writing; and

(3) Contain the attending physician's opinion regarding the cause and nature of the incapacity or debilitation, as well as its extent and probable duration.

(c) The attending physician shall provide a copy of the determination of incapacity or debilitation to the standby guardian, if the standby guardian's identity is known to the physician.

(d) The standby guardian shall ensure that the petitioner or designator is informed of the commencement of the standby guardian's authority as a result of a determination of incapacity or debilitation and of the possibility of a future suspension of the standby guardian's authority pursuant to G.S. 35A-1375.

"*§ 35A-1375. Restoration of capacity or ability; suspension of guardianship.*

In the event that the authority of the standby guardian becomes effective upon the receipt of a determination of incapacity or debilitation and the petitioner or designator is subsequently restored to capacity or ability to care for the child, the authority of the standby guardian based on that incapacity or debilitation shall be suspended. The attending physician shall provide a copy of the determination of restored capacity or ability to the standby

guardian, if the identity of the standby guardian is known to the attending physician. If an order appointing the standby guardian as guardian of the person or general guardian of the minor child has been entered, the standby guardian shall, and the petitioner or designator may, file a copy of the determination of restored capacity or ability in the office of the clerk who entered the order. A determination of restored capacity or ability shall:

(1) Be made by the attending physician to a reasonable degree of medical certainty;

(2) Be in writing; and

(3) Contain the attending physician's opinion regarding the cause and nature of the parent's or legal guardian's restoration to capacity or ability.

Any order appointing the standby guardian as guardian of the person or general guardian of the minor child shall remain in full force and effect, and the authority of the standby guardian shall recommence upon the standby guardian's receipt of a subsequent determination of the petitioner's or designator's incapacity, pursuant to G.S. 35A-1372(j), or upon the standby guardian's receipt of a subsequent determination of debilitation pursuant to G.S. 35A-1372(k), or upon the receipt of proof of death of the petitioner or designator, or upon the written consent of the petitioner or designator, pursuant to G.S. 35A-1372(l).

"§ *35A-1376. Authority concurrent to parental rights.*

The commencement of the standby guardian's authority pursuant to a determination of incapacity, determination of debilitation, or written consent shall not itself divest the petitioner or designator of any parental or guardianship rights, but shall confer upon the standby guardian concurrent authority with respect to the minor child.

"§ *35A-1377. Powers and duties.*

A standby guardian designated pursuant to G.S. 35A-1373 and a guardian of the person or general guardian appointed pursuant to this Article have all of the powers, authority, duties, and responsibilities of a guardian appointed pursuant to Subchapter II of this Chapter.

"§ *35A-1378. Appointment of guardian ad litem.*

(a) The clerk may appoint a volunteer guardian ad litem, if available, to represent the best interests of the minor child and, where appropriate, express the wishes of the minor child.

(b) The duties of the guardian ad litem, when appointed, shall be to make an investigation to determine the facts, the needs of the minor child and the available resources within the family to meet those needs, and to protect and promote the best interests of the minor child until formally relieved of the responsibility by the clerk.

(c) The court may order the guardian ad litem to conduct an investigation to determine the fitness of the intended standby guardian and alternate standby guardian, if any, to perform the duties of standby guardian.

"§ *35A-1379. Bond.*

The bond requirements of Article 7 of this Chapter shall apply to a guardian of the person or general guardian appointed pursuant to G.S. 35A-1372 or G.S. 35A-1373, provided that: (i) the clerk need not require a bond if the bond requirement is waived in writing by the petitioner or designator;

and (ii) a general guardian appointed pursuant to G.S. 35A-1372 shall not be required to furnish a bond until a triggering event has occurred.

"*§ 35A-1380. Accounting.*

The accounting requirements of Article 10 of this Chapter apply to a general guardian appointed pursuant to this Article.

"*§ 35A-1381. Termination.*

Any standby guardianship created under this Article shall continue until the child reaches 18 years of age unless sooner terminated by order of the clerk who entered the order appointing the standby guardian, by revocation pursuant to this Article, or by renunciation pursuant to this Article. A standby guardianship shall terminate, and the authority of the standby guardian designated pursuant to G.S. 35A-1373 or of a guardian of the person or general guardian appointed pursuant to this Article shall cease, upon the entry of an order of the district court granting custody of the minor child to any other person."

Sec. 2. This act becomes effective December 1, 1995, and applies to designations executed and petitions filed on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1995.

H.B. 337 **CHAPTER 314**

AN ACT TO PROVIDE FOR CONTROLLED ACCESS COMMUNITY FISHING LICENSES IN TRANSYLVANIA COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-271(d) is amended by adding a new subdivision to read:

"(10) Controlled Access Community Fishing License -- $300.00. This license shall be issued only to a property owners' association when: (i) the property owners' association controls all legal access to the man-made body or bodies of water that lie entirely within the planned community; (ii) the man-made body or bodies of water are owned, leased, or otherwise maintained by the property owners' association; and (iii) legal access to the man-made body or bodies of water can be obtained only through security gates and checkpoints. This license entitles only residents of the planned community and their guests to fish in the man-made body or bodies of water controlled by the property owners' association."

Sec. 2. This act applies only to Transylvania County.

Sec. 3. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 21st day of June, 1995.

H.B. 428 **CHAPTER 315**

AN ACT TO PROVIDE FOR TRAINING OF TREASURERS OF REFERENDUM COMMITTEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-278.7 is amended by adding a new subsection to read:

"(e) Every treasurer of a referendum committee shall receive, prior to every election in which the referendum committee is involved, training from the State Board of Elections as to the duties of the office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer may designate an employee or volunteer of the committee to receive the training."

Sec. 2. This act becomes effective September 1, 1995, and applies to all elections on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1995.

H.B. 463 **CHAPTER 316**

AN ACT TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO INVESTIGATE AND REPORT ON THE NUMBER OF EQUITABLE DISTRIBUTION CASES PENDING ACROSS THE STATE AND THE REASONS FOR DELAYS IN DISPOSITION OF THE CASES.

The General Assembly of North Carolina enacts:

Section 1. The Administrative Office of the Courts shall review the number of equitable distribution cases pending in each judicial district in this State as of January 1, 1995. The review and resulting report shall include the following:

(1) Length of time from filing to disposition or current status of each case;
(2) The judicial district in which each case is pending; and
(3) For pending cases filed on or before January 1, 1994, the reasons for the delay in disposition of each case.

The Administrative Office of the Courts shall submit a written report to the General Assembly and to the Governor on or before January 1, 1996, citing specific findings resulting from the review, and recommendations to the General Assembly on how equitable distribution cases may be more timely resolved. The report shall include proposed legislation, if any, and the amount of funds necessary to enact the legislation.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1995.

S.B. 308 **CHAPTER 317**

AN ACT TO AMEND THE LAW REGARDING MEDICAID FRAUD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-64 is amended by inserting a new subsection to read:

"(b1) It is unlawful for any person knowingly, willingly, and with intent to defraud, to obtain or attempt to obtain, or to assist, aid, or abet another person, either directly or indirectly, to obtain money, services, or any other thing of value to which the person is not entitled as a recipient under this Part, or otherwise to deliberately misuse a Medicaid identification card. This misuse includes the sale, alteration, or lending of the Medicaid identification card to others for services and the use of the card by someone other than the recipient to receive or attempt to receive Medicaid program coverage for services rendered to that individual.

Proof of intent to defraud does not require proof of intent to defraud any particular person."

Sec. 2. This act becomes effective December 1, 1995, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1995.

S.B. 342 **CHAPTER 318**

AN ACT TO IMPROVE INSURANCE COMPANY FINANCIAL MATTERS BY ADOPTING STANDARDS FOR ASSUMPTION REINSURANCE, MATERIAL TRANSACTIONS, AND PROPERTY AND CASUALTY INSURER CAPITAL.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of Chapter 58 of the General Statutes reads as rewritten:

"ARTICLE 10.

~~"Conversion of Stock Corporations into Mutual Corporations.~~

"Miscellaneous Insurer Financial Provisions.

"Part 1. Conversion from Stock to Mutual Corporation.

"*§ 58-10-1. Domestic stock life insurance corporations authorized to convert into mutual corporations; procedure.*

Any domestic stock life insurance corporation may become a mutual life insurance corporation, and to that end may carry out a plan for the acquisition of shares of its capital stock: Provided, however, that such plan (i) shall have been adopted by a vote of a majority of the directors of such corporation; (ii) shall have been approved by a vote of the holders of two thirds of the stock outstanding at the time of issuing the call for a meeting for that purpose; (iii) shall have been submitted to the Commissioner and shall have been approved by him in writing, and (iv) shall have been approved by a majority vote of the policyholders (including, for the purpose

of this ~~Article,~~ Part, the employer or the president, secretary or other executive officer of any corporation or association to which a master group policy has been issued, but excluding the holders of certificates or policies issued under or in connection with a master group policy) voting at said meeting, called for that purpose, at which meeting only such policyholders whose insurance shall then be in force and shall have been in force for at least one year prior to such a meeting shall be entitled to vote; notice of such a meeting shall be given by mailing such notice, postage prepaid, from the home office of such corporation at least 30 days prior to such meeting to such policyholders at their last known post-office addresses: Provided, that personal delivery of such written notice to any policyholder may be in lieu of mailing the same; and such meeting shall be otherwise provided for and conducted in such a manner as shall be provided in such plan: Provided, however, that policyholders may vote in person, by proxy, or by mail; that all such votes shall be cast by ballot, and a representative of the Commissioner shall supervise and direct the methods and procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and the canvass of the vote, and who shall certify to the said representative and to the corporation the results thereof, and with respect thereto shall act under such rules and regulations as shall be prescribed by the Commissioner; that all necessary expenses incurred by the Commissioner or his representative shall be paid by the corporation as certified to by said Commissioner. Every payment for the acquisition of any shares of the capital stock of such corporation, the purchase price of which is not fixed by such plan, shall be subject to the approval of the Commissioner: Provided, that neither such plan, nor any payment thereunder, nor any payment not fixed by such plan, shall be approved by the Commissioner, if the making of such payment shall reduce the assets of the corporation to an amount less than the entire liabilities of the corporation, including therein the net values of its outstanding contracts according to the standard adopted by the Commissioner, and also all other funds, contingent reserves and surplus which the corporation is required by order or direction of the Commissioner to maintain, save so much of the surplus as shall have been appropriated or paid under such plan.

"§ *58-10-5. Stock acquired to be turned over to voting trust until all stock acquired; dividends repaid to corporation for beneficiaries.*

If a domestic stock life insurance corporation shall determine to become a mutual life insurance corporation it may, in carrying out any plan to that end under the provisions of G.S. 58-10-1, acquire any shares of its own stock by gift, bequest or purchase. And until all such shares are acquired, any shares so acquired shall be acquired in trust for the policyholders of the corporation as hereinafter provided, and shall be assigned and transferred on the books of the corporation to not less than three nor more than five trustees, and be held by them in trust and be voted by such trustees at all corporate meetings at which stockholders have the right to vote until all of the capital stock of such corporation is acquired, when the entire capital stock shall be retired and canceled; and thereupon, unless sooner

incorporated as such, the corporation shall be and become a mutual life insurance corporation without capital stock. Said trustees shall be appointed and vacancies shall be filled as provided in the plan adopted under G.S. 58-10-1. Said trustees shall file with the corporation and with the Commissioner a verified acceptance of their appointments and declaration that they will faithfully discharge their duties as such trustees. After the payment of such dividends to stockholders or former stockholders as may have been provided in the plan adopted under G.S. 58-10-1, all dividends and other sums received by said trustees on said shares of stock so acquired, after paying the necessary expenses of executing said trust, shall be immediately repaid to said corporation for the benefit of all who are or may become policyholders of said corporation and entitled to participate in the profits thereof, and shall be added to and become a part of the surplus earned by said corporation, and be apportionable accordingly as a part of said surplus among said policyholders.

"Part 2. Assumption Reinsurance.

"*§ 58-10-20. Scope.*

(a) This Part applies to any licensed insurer that either assumes or transfers the obligations or risks on policies under an assumption reinsurance agreement that is entered into on or after January 1, 1996.

(b) This Part does not apply to:

(1) Any reinsurance agreement or transaction in which the ceding insurer continues to remain directly liable for its insurance obligations or risks under the policies subject to the reinsurance agreement.

(2) The substitution of one insurer for another upon the expiration of insurance coverage under statutory or contractual requirements and the issuance of a new policy by another insurer.

(3) The transfer of policies under mergers or consolidations of two or more insurers to the extent that those transactions are regulated by statute.

(4) Any insurer subject to a judicial order of liquidation or rehabilitation.

(5) Any reinsurance agreement or transaction to which a state insurance guaranty association is a party, provided that policyholders do not lose any rights or claims afforded under their original policies under Articles 48 or 62 of this Chapter.

(6) The transfer of liabilities from one insurer to another under a single group policy upon the request of the group policyholder.

"*§ 58-10-25. Definitions.*

As used in this Part:

(1) Assuming insurer. -- The insurer that acquires an insurance obligation or risk from the transferring insurer under an assumption reinsurance agreement.

(2) Assumption reinsurance agreement. -- Any contract that:

a. Transfers insurance obligations or risks of existing or in-force policies from a transferring insurer to an assuming insurer.

b. Is intended to effect a novation of the transferred policy with the result that the assuming insurer becomes directly liable to

the policyholders of the transferring insurer and the transferring insurer's insurance obligations or risks under the contracts are extinguished.

(3) Home service business. -- Insurance business on which premiums are collected on a weekly or monthly basis by an agent of the insurer.

(4) Policy. -- A contract of insurance as defined in G.S. 58-1-10.

(5) Policyholder. -- Any person that has the right to terminate or otherwise alter the terms of a policy. It includes any group policy certificate holder whose certificate is in force on the proposed effective date of the assumption, if the certificate holder has the right to keep the certificate in force without any change in benefits after termination of the group policy. The right to keep the certificate in force referred to in this subdivision does not include the right to elect individual coverage under the Consolidated Omnibus Budget Reconciliation Act ('COBRA'), section 601, et seq., of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1161, et seq.

(6) Transferring insurer. -- The insurer that transfers an insurance obligation or risk to an assuming insurer under an assumption reinsurance agreement.

"*§ 58-10-30. Notice requirements.*

(a) The transferring insurer shall provide or cause to be provided to each policyholder a notice of transfer by first-class mail, addressed to the policyholder's last known address or to the address to which premium notices or other policy documents are sent; or with respect to home service business, by personal delivery with acknowledged receipt. A notice of transfer shall also be sent to the transferring insurer's agents or brokers of record on the affected policies.

(b) The notice of transfer shall be in a form identical or substantially similar to Appendix A of the NAIC Assumption Reinsurance Model Act, as amended by the NAIC and shall state or provide:

(1) The date on which the transfer and novation of the policyholder's policy is proposed to take place.

(2) The names, addresses, and telephone numbers of the assuming and transferring insurers.

(3) That the policyholder has the right to either consent to or reject the transfer and novation.

(4) The procedures and time limit for consenting to or rejecting the transfer and novation.

(5) A summary of any effect that consenting to or rejecting the transfer and novation will have on the policyholder's rights.

(6) A statement that the assuming insurer is licensed to write the type of business being assumed in the state where the policyholder resides, or is otherwise authorized, as provided in this Part, to assume that business.

(7) The name and address of the person at the transferring insurer to whom the policyholder should send the policyholder's written statement of acceptance or rejection of the transfer and novation.

(8) The address and telephone number of the insurance department where the policyholder resides so that the policyholder may write or call that insurance department for further information about the financial condition of the assuming insurer.

(9) The following financial data for both insurers:

a. Ratings for the last five years, if available, or for any shorter period that is available, from two nationally recognized insurance rating services acceptable to the Commissioner, including the rating services' explanations of the meanings of their ratings. If ratings are unavailable for any year of the five-year period, this shall also be disclosed.

b. A balance sheet as of December 31 for the previous three years, if available, or for any shorter period that is available, and as of the date of the most recent quarterly statement.

c. A copy of the Management's Discussion and Analysis that was filed as a supplement to the previous year's annual statement.

d. An explanation of the reason for the transfer.

(c) The notice of transfer shall include a preaddressed, postage-paid response card that the policyholder may return as the policyholder's written statement of acceptance or rejection of the transfer and novation.

(d) The notice of transfer shall be filed as part of the prior approval requirement set forth in subsection (e) of this section.

(e) Prior approval by the Commissioner is required for any transaction in which a domestic insurer assumes or transfers obligations or risks on policies under an assumption reinsurance agreement. No insurer licensed in this State shall transfer obligations or risks on policies issued to or owned by residents of this State to any insurer that is not licensed in this State. A domestic insurer shall not assume obligations or risks on policies issued to or owned by policyholders residing in any other state unless it is licensed in the other state, or the insurance regulator of that state has approved the assumption.

(f) Any licensed foreign insurer that enters into an assumption reinsurance agreement that transfers the obligations or risks on policies issued to or owned by residents of this State shall file with the Commissioner the assumption certificate, a copy of the notice of transfer, and an affidavit that the transaction is subject to substantially similar requirements in the states of domicile of both the transferring and assuming insurers. If those requirements do not exist in the state of domicile of either the transferring or assuming insurer, the requirements of subsection (g) of this section apply.

(g) Any licensed foreign insurer that enters into an assumption reinsurance agreement that transfers the obligations or risks on policies issued to or owned by residents of this State shall obtain prior approval of the Commissioner and be subject to all other requirements of this Part with respect to residents of this State, unless the transferring and assuming insurers are subject to assumption reinsurance requirements adopted by statute or administrative rule in the states of their domicile that are

substantially similar to those contained in this Part and in any administrative rules adopted under this Part.

(h) The following factors, along with any other factors the Commissioner deems to be appropriate under the circumstances, shall be considered by the Commissioner in reviewing a request for approval:

(1) The financial condition of the transferring and assuming insurers and the effect the transaction will have on the financial condition of each company.

(2) The competence, experience, and integrity of those persons who control the operation of the assuming insurer.

(3) The plans or proposals the assuming insurer has with respect to the administration of the policies subject to the proposed transfer.

(4) Whether the transfer is fair and reasonable to the policyholders of both insurers.

(5) Whether the notice of transfer to be provided by the insurer is fair, adequate, and not misleading.

"*§ 58-10-35. Policyholder rights.*

(a) Policyholders may reject the transfer and novation of their policies by indicating on the response card that the assumption is rejected and returning the card to the transferring insurer.

(b) Payment of any premium to the assuming company during the 24-month period after the notice of transfer has been received indicates the policyholder's acceptance of the transfer to the assuming insurer; and a novation shall occur only if the premium notice clearly states that payment of the premium to the assuming insurer constitutes acceptance of the transfer. The premium notice shall also provide a method for the policyholder to pay the premium while reserving the right to reject the transfer. With respect to any home service business or any other business not using premium notices, the disclosures and procedural requirements of this subsection are to be set forth in the notice of transfer required by G.S. 58-10-30 and in the assumption certificate.

(c) After no fewer than 24 months after the mailing of the initial notice of transfer required under G.S. 58-10-30, if positive consent to, or rejection of, the transfer and assumption has not been received or consent has occurred under subsection (b) of this section, the transferring insurer shall send to the policyholder a second and final notice of transfer as specified in G.S. 58-10-30. If the policyholder does not accept or reject the transfer during the one-month period immediately after the date on which the transferring insurer mailed the second and final notice of transfer, the policyholder's consent and novation of the contract will occur. With respect to the home service business, or any other business not using premium notices, the 24-month and one-month periods shall be measured from the date of delivery of the notice of transfer under G.S. 58-10-30.

(d) The transferring insurer shall be deemed to have received the response card on the date it is postmarked. A policyholder may also send the response card by facsimile, other electronic transmission, registered mail, express delivery, or courier service; in which case the response card shall be deemed to have been received by the transferring insurer on the date of actual receipt by the transferring insurer.

"§ 58-10-40. *Effect of consent.*

If a policyholder consents to the transfer under G.S. 58-10-35 or if the transfer is effected under G.S. 58-10-45, there shall be a novation of the policy, subject to the assumption reinsurance agreement, with the result that the transferring insurer is thereby relieved of all insurance obligations or risks transferred under the assumption reinsurance agreement and the assuming insurer is directly and solely liable to the policyholder for those insurance obligations or risks.

"§ 58-10-45. *Commissioner's discretion.*

If a domestic insurer or a foreign insurer from a state having a substantially similar law is deemed by its domiciliary insurance regulator to be in hazardous financial condition or a proceeding has been instituted against it for the purpose of reorganizing or conserving the insurer, and the transfer of the policies is in the best interest of the policyholders, as determined by the domiciliary insurance regulator, a transfer and novation may be effected notwithstanding the provisions of this Part. This may include a form of implied consent and adequate notification to the policyholders of the circumstances requiring the transfer as approved by the Commissioner.

"Part 3. Disclosure of Material Transactions.

"§ 58-10-55. *Report.*

(a) This Part applies only to domestic insurers. Effective October 1, 1995, every insurer shall file a report with the Commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements, unless the acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the Commissioner for review, approval, or informational purposes under any other provisions of this Chapter or the North Carolina Administrative Code. This report is due within 15 days after the end of the calendar month in which any of these transactions occurred. A copy of the report, including any filed exhibits or other attachments, shall also be filed with the NAIC.

(b) All reports obtained by or disclosed to the Commissioner under this Part are confidential and are not subject to subpoena. No report shall be made public by the Commissioner, the NAIC, or any other person, except to insurance regulators of other states, without the prior written consent of the reporting insurer, unless the Commissioner, after giving the insurer notice and an opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication of the report. In that event, the Commissioner may publish all or any part of the report in a manner the Commissioner considers appropriate.

"§ 58-10-60. *Acquisitions and dispositions of assets.*

(a) Insurers do not have to report acquisitions or dispositions under G.S. 58-10-55 if they are not material. For the purposes of this Part, a material acquisition or the aggregate of any series of related acquisitions during any 30-day period, or a material disposition or the aggregate of any series of related dispositions during any 30-day period, is one that is nonrecurring, not in the ordinary course of business, and involves more than five percent

(5%) of the insurer's total admitted assets as reported in its most recent financial statement filed with the Department.

(b) Asset acquisitions subject to this Part include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition, other than the construction or development of real property by or for the insurer or the acquisition of materials for that purpose. Asset dispositions subject to this Part include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

(c) The following information shall be disclosed in any report under this section:

(1) Date of the transaction.
(2) Manner of acquisition or disposition.
(3) Description of the assets involved.
(4) Nature and amount of the consideration given or received.
(5) Purpose of, or reason for, the transaction.
(6) Manner by which the amount of consideration was determined.
(7) Gain or loss recognized or realized as a result of the transaction.
(8) Name of each person from whom the assets were acquired or to whom they were disposed.

(d) Every insurer shall report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that uses a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer cedes substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars ($1,000,000) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

"§ 58-10-65. Nonrenewals, cancellations, or revisions of ceded reinsurance agreements.

(a) Insurers do not have to report nonrenewals, cancellations, or revisions of ceded reinsurance agreements under G.S. 58-10-55 if they are not material. For the purposes of this Part, a nonrenewal, cancellation, or revision of a ceded reinsurance agreement is considered material and must be reported if:

(1) It is for property and casualty business, including accident and health business written by a property and casualty insurer and affects:
   a. More than fifty percent (50%) of the insurer's total ceded written premium; or
   b. More than fifty percent (50%) of the insurer's total ceded indemnity and loss adjustment reserves.
(2) It is for life, annuity, and accident and health business and affects more than fifty percent (50%) of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement.

(3) It is for either property and casualty, or life, annuity, and accident and health business, and:

a. An authorized reinsurer representing more than ten percent (10%) of a total cession is replaced by one or more unauthorized reinsurers; or

b. Previously established collateral requirements have been reduced or waived with respect to one or more unauthorized reinsurer's representing collectively more than ten percent (10%) of a total cession.

(b) No filing is required if:

(1) For property and casualty business, including accident and health business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than ten percent (10%) of its total written premium for direct and assumed business.

(2) For life, annuity, and accident and health business, the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent (10%) of the statutory reserve requirement before any cession.

(c) The following information shall be disclosed in any report under this section:

(1) Effective date of the nonrenewal, cancellation, or revision.

(2) Description of the transaction, with an identification of the initiator of the transaction.

(3) Purpose of, or reason for, the transaction.

(4) If applicable, identity of the replacement reinsurers.

(d) Every insurer shall report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that uses a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer cedes substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars ($1,000,000) total direct plus assumed written premiums during a calendar year that are not subject to the pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus."

Sec. 2. G.S. 58-12-2 reads as rewritten:

"*§ 58-12-2. Definitions.*

As used in this Article, the following terms have the following meanings:

(1) Adjusted risk-based capital report. -- A risk-based capital report that has been adjusted by the Commissioner under ~~G.S. 58-12-6(c).~~ G.S. 58-12-6.

(2) Corrective ~~Order.~~ order. -- An order issued by the Commissioner specifying corrective actions that the Commissioner has determined are required.

(3) Domestic insurer. -- Any ~~life or health~~ insurance company organized in this State under Article 7 of this Chapter.

(4) Foreign insurer. -- Any ~~life or health~~ insurance company that is admitted to do business in this State under Article 16 of this Chapter but is not domiciled in this State.

(4a) Life or health insurer. -- Any insurance company licensed to write the kinds of insurance specified in G.S. 58-7-15(1), (2), or (3); or a licensed property and casualty insurer writing only the kinds of insurance specified in G.S. 58-7-15(3).

(5) Negative trend. -- A negative ~~trend~~ trend, with respect to a life or health insurer, over a period of time, as determined in accordance with the 'Trend Test Calculation' included in the risk-based capital instructions.

(5a) Property or casualty insurer. -- Any insurance company licensed to write the kinds of insurance specified in G.S. 58-7-15(4) through (22); but not monoline mortgage guaranty insurers, financial guaranty insurers, or title insurers.

(6) Risk-based capital instructions. -- The risk-based capital report including risk-based capital instructions adopted by the NAIC, as those risk-based capital instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(7) Risk-based capital level. -- An insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital, or mandatory control level risk-based capital where:

a. 'Company action level risk-based capital' means, with respect to any insurer, the product of 2.0 and its authorized control level risk-based capital.

b. 'Regulatory action level risk-based capital' means the product of 1.5 and its authorized control level risk-based capital.

c. 'Authorized control level risk-based capital' means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.

d. 'Mandatory control level risk-based capital' means the product of .70 and the authorized control level risk-based capital.

(8) Risk-based capital plan. -- A comprehensive financial plan containing the elements specified in G.S. 58-12-11(b). If the Commissioner rejects the risk-based capital plan, and it is revised by the insurer, with or without the Commissioner's recommendation, the plan shall be called the 'revised risk-based capital plan'.

(9) Risk-based capital report. -- The report required in G.S. 58-12-6.

(10) Total adjusted capital. -- The sum of:

a. An insurer's statutory capital and ~~surplus;~~ surplus, as determined in accordance with the statutory accounting applicable to the annual financial statements required under G.S. 58-2-165; and

b. Such other items, if any, as the risk-based capital instructions may provide."

Sec. 3. Article 12 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"*§ 58-12-4. Finding; endorsement of additional capital.*

The General Assembly finds that an excess of capital over the amount produced by the risk-based capital requirements contained in this Article and in the formulas, schedules, and instructions referenced in this Article is desirable in the business of insurance. Accordingly, the General Assembly encourages insurers to seek to maintain capital above the risk-based capital levels required by this Article. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in or affecting the business of insurance but not accounted for or only partially measured by the risk-based capital requirements contained in this Article."

Sec. 4. G.S. 58-12-6 reads as rewritten:

"*§ 58-12-6. Risk-based capital reports.*

(a) Every domestic insurer shall, on or before each March ~~15~~ 1 (the 'filing date'), prepare and submit to the Commissioner a report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing such information as is required by the risk-based capital instructions. In addition, every domestic insurer shall file its risk-based capital report:

(1) With the NAIC in accordance with the risk-based capital instructions; and

(2) With the insurance regulator in any state in which the insurer is authorized to do business, if the Commissioner has notified the insurer of its request in writing, in which case the insurer shall file its risk-based capital report not later than the later of:

a. Fifteen days after the receipt of notice to file its risk-based capital report with that state; or

b. The filing date.

(b) ~~An~~ A life or health insurer's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account (and may adjust for the covariance between):

(1) The risk with respect to the insurer's assets;

(2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(3) The interest rate risk with respect to the insurer's business; and

(4) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

These risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(c) If a domestic insurer files a risk-based capital report that in the judgment of the Commissioner is inaccurate, the Commissioner shall adjust the risk-based capital report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason

for the adjustment. A risk-based capital report as adjusted is referred to as an 'adjusted risk-based capital report'.

(d) A property or casualty insurer's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account (and may adjust for the covariance between):

(1) Asset risk;
(2) Credit risk;
(3) Underwriting risk; and
(4) All business and other relevant risks set forth in the risk-based capital instructions, determined in each case by applying the factors in the manner set forth in the risk-based capital instructions."

Sec. 5. G.S. 58-12-11(a) reads as rewritten:

"(a) 'Company action level event' means any of the following events:

(1) The filing of a risk-based capital report by an insurer that indicates that:
   a. The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or
   b. The insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 2.5 and has a negative ~~trend.~~ trend, if the insurer is a life or health insurer.
(2) The notification by the Commissioner to the insurer of an adjusted risk-bases capital report that indicates the event in sub-subdivision (1)a. or b. of this subsection if the insurer does not challenge the adjusted risk-based capital report under G.S. 58-12-30.
(3) If the insurer challenges an adjusted risk-based capital report that indicates the event in sub-subdivision (1)a. or b. of this subsection under G.S. 58-12-30, the notification by the Commissioner to the insurer that the Commissioner has rejected the insurer's challenge."

Sec. 6. G.S. 58-12-40 reads as rewritten:

"*§ 58-12-40. Supplemental ~~provisions.~~ provisions; rules; exemptions.*

(a) The provisions of this Article are supplemental to any other provisions of the laws of this State, and do not preclude or limit any other powers or duties of the Commissioner under those laws, including Article 30 of this Chapter.

(b) Risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans are solely for use by the Commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers. The Commissioner shall not use any of these reports or plans for rate making nor consider or introduce them as evidence in any rate proceeding. The Commissioner shall not use these reports or plans to calculate or derive any elements of an appropriate premium level or rate of

return for any kind of insurance that an insurer or any affiliate is authorized to write.

(c) The Commissioner may exempt from the application of this Article any domestic property or casualty insurer that does all of the following:

(1) Writes direct business only in this State.

(2) Writes direct annual premiums of one thousand dollars ($1,000) or less.

(3) Assumes no reinsurance in excess of five percent (5%) of direct written premiums."

Sec. 7. Article 12 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"*§ 58-12-60. Property or casualty phase-in provision.*

For risk-based capital reports required to be filed by property or casualty insurers with respect to 1995, the following requirements apply in lieu of the provisions of G.S. 58-12-11, 58-12-16, 58-12-21, and 58-12-25:

(1) In the event of a company action level event with respect to a domestic insurer, the Commissioner shall take no regulatory action under this Article.

(2) In the event of a regulatory action level event under G.S. 58-12-16(a)(1), (2), or (3), the Commissioner shall take the actions required under G.S. 58-12-11.

(3) In the event of a regulatory action level event under G.S. 58-12-16(a)(4), (5), (6), (7), (8), or (9), or an authorized control level event, the Commissioner shall take the actions required under G.S. 58-12-16 with respect to the insurer.

(4) In the event of a mandatory control level event with respect to an insurer, the Commissioner shall take the actions required under G.S. 58-12-21 with respect to the insurer."

Sec. 8. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part declared to be unconstitutional or invalid.

Sec. 9. Part 2 of Section 1 of this act becomes effective January 1, 1996, and applies to assumption reinsurance agreements entered into on or after that date. The remainder of this act becomes effective January 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1995.

H.B. 270 **CHAPTER 319**

AN ACT TO MAKE CHANGES IN THE LAWS PERTAINING TO ALIMONY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-16.1, 50-16.2, 50-16.3, 50-16.5, and 50-16.11 are repealed.

Sec. 2. Chapter 50 of the General Statutes is amended by adding the following new sections to read:

"§ 50-16.1A. *Definitions.*

As used in this Chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) 'Alimony' means an order for payment for the support and maintenance of a spouse or former spouse, periodically or in a lump sum, for a specified or for an indefinite term, ordered in an action for divorce, whether absolute or from bed and board, or in an action for alimony without divorce.

(2) 'Dependent spouse' means a spouse, whether husband or wife, who is actually substantially dependent upon the other spouse for his or her maintenance and support or is substantially in need of maintenance and support from the other spouse.

(3) 'Marital misconduct' means any of the following acts that occur during the marriage and prior to or on the date of separation:

a. Illicit sexual behavior. For the purpose of this section, illicit sexual behavior means acts of sexual or deviate sexual intercourse, deviate sexual acts, or sexual acts defined in G.S. 14-27.1(4), voluntarily engaged in by a spouse with someone other than the other spouse;

b. Involuntary separation of the spouses in consequence of a criminal act committed prior to the proceeding in which alimony is sought;

c. Abandonment of the other spouse;

d. Malicious turning out-of-doors of the other spouse;

e. Cruel or barbarous treatment endangering the life of the other spouse;

f. Indignities rendering the condition of the other spouse intolerable and life burdensome;

g. Reckless spending of the income of either party, or the destruction, waste, diversion, or concealment of assets;

h. Excessive use of alcohol or drugs so as to render the condition of the other spouse intolerable and life burdensome;

i. Willful failure to provide necessary subsistence according to one's means and condition so as to render the condition of the other spouse intolerable and life burdensome.

(4) 'Postseparation support' means spousal support to be paid until the earlier of either the date specified in the order of postseparation support, or an order awarding or denying alimony. Postseparation support may be ordered in an action for divorce, whether absolute or from bed and board, for annulment, or for alimony without divorce.

(5) 'Supporting spouse' means a spouse, whether husband or wife, upon whom the other spouse is actually substantially dependent for maintenance and support or from whom such spouse is substantially in need of maintenance and support.

"§ 50-16.2A. *Postseparation support.*

(a) In an action brought pursuant to Chapter 50 of the General Statutes, either party may move for postseparation support. The verified pleading,

verified motion, or affidavit of the moving party shall set forth the factual basis for the relief requested.

(b) In ordering postseparation support, the court shall base its award on the financial needs of the parties, considering the parties' accustomed standard of living, the present employment income and other recurring earnings of each party from any source, their income-earning abilities, the separate and marital debt service obligations, those expenses reasonably necessary to support each of the parties, and each party's respective legal obligations to support any other persons.

(c) Except when subsection (d) of this section applies, a dependent spouse is entitled to an award of postseparation support if, based on consideration of the factors specified in subsection (b) of this section, the court finds that the resources of the dependent spouse are not adequate to meet his or her reasonable needs and the supporting spouse has the ability to pay.

(d) At a hearing on postseparation support, the judge shall consider marital misconduct by the dependent spouse occurring prior to or on the date of separation in deciding whether to award postseparation support and in deciding the amount of postseparation support. When the judge considers these acts by the dependent spouse, the judge shall also consider any marital misconduct by the supporting spouse in deciding whether to award postseparation support and in deciding the amount of postseparation support.

(e) Nothing herein shall prevent a court from considering incidents of post date-of-separation marital misconduct as corroborating evidence supporting other evidence that marital misconduct occurred during the marriage and prior to date of separation.

"§ *50-16.3A. Alimony.*

(a) Entitlement. -- In an action brought pursuant to Chapter 50 of the General Statutes, either party may move for alimony. The court shall award alimony to the dependent spouse upon a finding that one spouse is a dependent spouse, that the other spouse is a supporting spouse, and that an award of alimony is equitable after considering all relevant factors, including those set out in subsection (b) of this section. If the court finds that the dependent spouse participated in an act of illicit sexual behavior, as defined in G.S. 50-16.1A(3)a., during the marriage and prior to or on the date of separation, the court shall not award alimony. If the court finds that the supporting spouse participated in an act of illicit sexual behavior, as defined in G.S. 50-16.1A(3)a., during the marriage and prior to or on the date of separation, then the court shall order that alimony be paid. If the court finds that the dependent and the supporting spouse each participated in an act of illicit sexual behavior during the marriage and prior to or on the date of separation, then alimony shall be denied or awarded in the discretion of the court after consideration of all of the circumstances. Any act of illicit sexual behavior by either party that has been condone by the other party shall not be considered by the court.

The claim for alimony may be heard on the merits prior to the entry of a judgment for equitable distribution, and if awarded, the issues of amount and of whether a spouse is a dependent or supporting spouse may be reviewed by the court after the conclusion of the equitable distribution claim.

(b) Amount and Duration. -- The court shall exercise its discretion in determining the amount, duration, and manner of payment of alimony. The duration of the award may be for a specified or for an indefinite term. In determining the amount, duration, and manner of payment of alimony, the court shall consider all relevant factors, including:

(1) The marital misconduct of either of the spouses. Nothing herein shall prevent a court from considering incidents of post date-of-separation marital misconduct as corroborating evidence supporting other evidence that marital misconduct occurred during the marriage and prior to date of separation;

(2) The relative earnings and earning capacities of the spouses;

(3) The ages and the physical, mental, and emotional conditions of the spouses;

(4) The amount and sources of earned and unearned income of both spouses, including, but not limited to, earnings, dividends, and benefits such as medical, retirement, insurance, social security, or others;

(5) The duration of the marriage;

(6) The contribution by one spouse to the education, training, or increased earning power of the other spouse;

(7) The extent to which the earning power, expenses, or financial obligations of a spouse will be affected by reason of serving as the custodian of a minor child;

(8) The standard of living of the spouses established during the marriage;

(9) The relative education of the spouses and the time necessary to acquire sufficient education or training to enable the spouse seeking alimony to find employment to meet his or her reasonable economic needs;

(10) The relative assets and liabilities of the spouses and the relative debt service requirements of the spouses, including legal obligations of support;

(11) The property brought to the marriage by either spouse;

(12) The contribution of a spouse as homemaker;

(13) The relative needs of the spouses;

(14) The federal, State, and local tax ramifications of the alimony award;

(15) Any other factor relating to the economic circumstances of the parties that the court finds to be just and proper.

(c) Findings of Fact. -- The court shall set forth the reasons for its award or denial of alimony and, if making an award, the reasons for its amount, duration, and manner of payment. Except where there is a motion before the court for summary judgment, judgment on the pleadings, or other motion for which the Rules of Civil Procedure do not require special findings of fact, the court shall make a specific finding of fact on each of the factors in subsection (b) of this section if evidence is offered on that factor.

(d) In the claim for alimony, either spouse may request a jury trial on the issue of marital misconduct as defined in G.S. 50-16.1A. If a jury trial

is requested, the jury will decide whether either spouse or both have established marital misconduct."

Sec. 3. G.S. 50-16.4 reads as rewritten:

"*§ 50-16.4. Counsel fees in actions for ~~alimony.~~ alimony, postseparation support.*

At any time that a dependent spouse would be entitled to alimony pursuant to G.S. 50-16.3A, or ~~alimony pendente lite~~ postseparation support pursuant to G.S. ~~50-16.3,~~ 50-16.2A, the court may, upon application of such spouse, enter an order for reasonable counsel fees for the benefit of such spouse, to be paid and secured by the supporting spouse in the same manner as alimony."

Sec. 4. G.S. 50-16.6 reads as rewritten:

"*§ 50-16.6. When ~~alimony~~ alimony, postseparation support, counsel fees not payable.*

~~(a) Alimony or alimony pendente lite shall not be payable when adultery is pleaded in bar of demand for alimony or alimony pendente lite, made in an action or cross action, and the issue of adultery is found against the spouse seeking alimony, but this shall not be a bar to reasonable counsel fees.~~

~~(b)~~ Alimony, ~~alimony pendente lite,~~ postseparation support, and counsel fees may be barred by an express provision of a valid separation agreement or premarital agreement so long as the agreement is ~~performed.~~ performed, by Chapter 31A of the General Statutes, or by a judgment pursuant to G.S. 50-11 or G.S. 50-19."

Sec. 5. G.S. 50-16.7 reads as rewritten:

"*§ 50-16.7. How alimony and ~~alimony pendente lite~~ postseparation support paid; enforcement of decree.*

(a) Alimony or ~~alimony pendente lite~~ postseparation support shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property or any interest therein, or a security interest in or possession of real property, as the court may order. In every case in which either alimony or ~~alimony pendente lite~~ postseparation support is allowed and provision is also made for support of minor children, the order shall separately state and identify each allowance.

(b) The court may require the supporting spouse to secure the payment of alimony or ~~alimony pendente lite~~ postseparation support so ordered by means of a bond, mortgage, or deed of trust, or any other means ordinarily used to secure an obligation to pay money or transfer property, or by requiring the supporting spouse to execute an assignment of wages, salary, or other income due or to become due.

(c) If the court requires the transfer of real or personal property or an interest therein as a part of an order for alimony or ~~alimony pendente lite~~ postseparation support as provided in subsection (a) or for the securing thereof, the court may also enter an order which shall transfer title, as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

(d) The remedy of arrest and bail, as provided in Article 34 of Chapter 1 of the General Statutes, shall be available in actions for alimony or ~~alimony pendente lite~~ postseparation support as in other cases.

(e) The remedies of attachment and garnishment, as provided in Article 35 of Chapter 1 and Article 9 of Chapter 110 of the General Statutes, shall be available in actions for alimony or ~~alimony pendente lite~~ postseparation support as in other cases, and for such purposes the dependent spouse shall be deemed a creditor of the supporting spouse.

(f) The remedy of injunction, as provided in Article 37 of Chapter 1 of the General Statutes and G.S. 1A-1, Rule 65, shall be available in actions for alimony or ~~alimony pendente lite~~ postseparation support as in other cases.

(g) Receivers, as provided in Article 38 of Chapter 1 of the General Statutes, may be appointed in actions for alimony or ~~alimony pendente lite~~ postseparation support as in other cases.

(h) A dependent spouse for whose benefit an order for the payment of alimony or ~~alimony pendente lite~~ postseparation support has been entered shall be a creditor within the meaning of Article 3 of Chapter 39 of the General Statutes pertaining to fraudulent conveyances.

(i) A judgment for alimony or ~~alimony pendente lite~~ postseparation support obtained in an action therefor shall not be a lien against real property unless the judgment expressly so provides, sets out the amount of the lien in a sum certain, and adequately describes the real property affected; but past-due periodic payments may by motion in the cause or by a separate action be reduced to judgment which shall be a lien as other judgments.

(j) Any order for the payment of alimony or ~~alimony pendente lite~~ postseparation support is enforceable by proceedings for civil contempt, and its disobedience may be punished by proceedings for criminal contempt, as provided in Chapter 5A of the General Statutes.

Notwithstanding the provisions of G.S. 1-294 or G.S. 1-289, an order for the periodic payment of alimony that has been appealed to the appellate division is enforceable in the trial court by proceedings for civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court of the appellate division in which the appeal is pending may stay any order for civil contempt entered for alimony until the appeal is decided if justice requires.

(k) The remedies provided by Chapter 1 of the General Statutes Article 28, Execution; Article 29B, Execution Sales; and Article 31, Supplemental Proceedings, shall be available for the enforcement of judgments for alimony and ~~alimony pendente lite~~ postseparation support as in other cases, but amounts so payable shall not constitute a debt as to which property is exempt from execution as provided in Article 16 of Chapter 1C of the General Statutes.

(l) The specific enumeration of remedies in this section shall not constitute a bar to remedies otherwise available."

Sec. 6. G.S. 50-16.8 reads as rewritten:

"*§ 50-16.8. Procedure in actions for ~~alimony and alimony pendente lite.~~ postseparation support.*

~~(a) The procedure in actions for alimony and actions for alimony pendente lite shall be as in other civil actions except as provided in this section and in G.S. 50-19.~~

~~(b) Payment of alimony may be ordered:~~

~~(1) Upon application of the dependent spouse in an action by such spouse for divorce, either absolute or from bed and board; or~~

~~(2) Upon application of the dependent spouse in a separate action instituted for the purpose of securing an order for alimony without divorce; or~~

~~(3) Upon application of the dependent spouse as a cross action in a suit for divorce, whether absolute or from bed and board, or a proceeding for alimony without divorce, instituted by the other spouse.~~

~~(c) A cross action for divorce, either absolute or from bed and board, shall be allowable in an action for alimony without divorce.~~

~~(d) Payment of alimony pendente lite may be ordered:~~

~~(1) Upon application of the dependent spouse in an action by such spouse for absolute divorce, divorce from bed and board, annulment, or for alimony without divorce; or~~

~~(2) Upon application of the dependent spouse as a cross action in a suit for divorce, whether absolute or from bed and board, annulment, or for alimony without divorce, instituted by the other spouse.~~

~~(e) No order for alimony pendente lite shall be made unless the supporting spouse shall have had five days' notice thereof; but if the supporting spouse shall have abandoned the dependent spouse and left the State, or shall be in parts unknown, or is about to remove or dispose of his or her property for the purpose of defeating the claim of the dependent spouse, no notice is necessary.~~

~~(f) When an application is made for alimony pendente lite, the party shall be heard orally, upon affidavit, verified pleading, or other proof, and the judge shall find the facts from the evidence so presented.~~

~~(g) When a district court having jurisdiction of the matter shall have been established, application for alimony pendente lite shall be made to such district court, and may be heard without a jury by a judge of said court at any time.~~

~~(h) In any case where a claim is made for alimony without divorce, when there is a minor child, the pleading shall set forth the name and age of each such child; and if there be no minor child, the pleading shall so state.~~ When an application is made for postseparation support, the court may base its award on a verified pleading, affidavit, or other competent evidence. The court shall set forth the reasons for its award or denial of postseparation support, and if making an award, the reasons for its amount, duration, and manner of payment."

Sec. 7. G.S. 50-16.9 reads as rewritten:

"§ *50-16.9. Modification of order.*

(a) An order of a court of this State for alimony or ~~alimony *pendente lite*~~, postseparation support, whether contested or entered by consent, may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested. This section shall not apply to orders entered by consent before October 1, 1967.

Any motion to modify or terminate alimony or ~~alimony *pendente lite*~~ postseparation support based on a resumption of marital relations between parties who remain married to each other shall be determined pursuant to G.S. 52-10.2.

(b) ~~If a dependent spouse who is receiving alimony under a judgment or order of a court of this State shall remarry, said alimony shall terminate.~~ If a dependent spouse who is receiving postseparation support or alimony from a supporting spouse under a judgment or order of a court of this State remarries or engages in cohabitation, the postseparation support or alimony shall terminate. Postseparation support or alimony shall terminate upon the death of either the supporting or the dependent spouse.

As used in this subsection, cohabitation means the act of two adults dwelling together continuously and habitually in a private heterosexual relationship, even if this relationship is not solemnized by marriage, or a private homosexual relationship. Cohabitation is evidenced by the voluntary mutual assumption of those marital rights, duties, and obligations which are usually manifested by married people, and which include, but are not necessarily dependent on, sexual relations. Nothing in this section shall be construed to make lawful conduct which is made unlawful by other statutes.

(c) When an order for alimony has been entered by a court of another jurisdiction, a court of this State may, upon gaining jurisdiction over the person of both parties in a civil action instituted for that purpose, and upon a showing of changed circumstances, enter a new order for alimony which modifies or supersedes such order for alimony to the extent that it could have been so modified in the jurisdiction where granted."

Sec. 8. G.S. 50-11(c) reads as rewritten:

"(c) A divorce obtained pursuant to G.S. 50-5.1 or G.S. 50-6 shall not affect the rights of either spouse with respect to any action for alimony or ~~alimony *pendente lite*~~ postseparation support pending at the time the judgment for divorce is granted. Furthermore, a judgment of absolute divorce shall not impair or destroy the right of a spouse to receive alimony or ~~alimony *pendente lite*~~ postseparation support or affect any other rights provided for such spouse under any judgment or decree of a court rendered before or at the time of the judgment of absolute divorce."

Sec. 9. G.S. 50-13.4(e) reads as rewritten:

"(e) Payment for the support of a minor child shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property of any interest therein, or a security interest in or possession of real property, as the court may order. In every case in which payment for the support of a minor child is ordered and alimony or ~~alimony *pendente lite*~~ postseparation support is also ordered, the order shall separately state and identify each allowance."

Sec. 10. G.S. 50-19 reads as rewritten:

"*§ 50-19. Maintenance of certain actions as independent actions permissible.*

(a) Notwithstanding the provisions of G.S. 1A-1, Rule 13(a), any action for divorce under the provisions of G.S. 50-5.1 or G.S. 50-6 that is filed as an independent, separate action may be prosecuted during the pendency of an action for:

(1) Alimony;

(2) ~~Alimony *pendente lite*~~; Postseparation support;
(3) Custody and support of minor children;
(4) Custody and support of a person incapable of self-support upon reaching majority; or
(5) Divorce pursuant to G.S. 50-5.1 or G.S. 50-6.

(b) Notwithstanding the provisions of G.S. 1A-1, Rule 13(a), any action described in subdivision (a)(1) through (a)(5) of this section that is filed as an independent, separate action may be prosecuted during the pendency of an action for divorce under G.S. 50-5.1 or G.S. 50-6."

Sec. 11. G.S. 52B-7(b) reads as rewritten:

"(b) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility. Before the court orders support under this subsection, the court must find that the party for whom support is ordered is a dependent spouse, as defined by G.S. ~~50-16.1~~, 50-16.1A, and that ~~there are grounds for alimony under G.S. 50-16.2 or alimony *pendente lite* under G.S. 50-16.3~~, the requirements of G.S. 50-16.2A regarding postseparation support or G.S. 50-16.3A regarding alimony have been met."

Sec. 12. This act becomes effective October 1, 1995, and applies to civil actions filed on or after that date. This act shall not apply to pending litigation, or to future motions in the cause seeking to modify orders or judgments in effect on October 1, 1995.

In the General Assembly read three times and ratified this the 21st day of June, 1995.

H.B. 330 **CHAPTER 320**

AN ACT TO AUTHORIZE THE CITY OF WINSTON-SALEM, THE CITY OF GASTONIA, AND THE CITY OF FAYETTEVILLE TO REQUIRE OWNERS OF RENTAL PROPERTY IN THOSE CITIES TO AUTHORIZE AN AGENT TO ACCEPT SERVICE OF PROCESS, AND TO CLARIFY THE AUTHORITY OF THE CITIES OF DURHAM AND ASHEVILLE TO DO THE SAME.

The General Assembly of North Carolina enacts:

Section 1. The Board of Aldermen of the City of Winston-Salem may, by ordinance, require that each owner of rental property within the city authorize a person residing in Forsyth County to serve as the owner's agent for the purpose of accepting service of process in an action involving a violation of an ordinance adopted under Parts 5 or 6 of Article 19 of Chapter 160A of the General Statutes. The owner shall provide, on a form supplied by the Housing Services Department, the authorized agent's name, address, and phone number, and shall notify the Housing Services Department of any changes in the information provided not more than 10 days after such changes occur. Nothing in this section shall require an owner to designate

an agent to accept service of process where the owner of the rental property resides within Forsyth County.

Sec. 2. The City Council of the City of Gastonia may, by ordinance, require that each owner of rental property within the city authorize a person residing in Gaston County to serve as the owner's agent for the purpose of accepting service of process in an action involving a violation of an ordinance adopted under Parts 5 or 6 of Article 19 of Chapter 160A of the General Statutes. The owner shall provide, on a form supplied by the Housing Services Department, the authorized agent's name, address, and phone number, and shall notify the Housing Services Department of any changes in the information provided not more than 10 days after such changes occur. Nothing in this section shall require an owner to designate an agent to accept service of process where the owner of the rental property resides within Gaston County.

Sec. 3. Section 1 of Chapter 261 of the 1993 Session Laws reads as rewritten:

"Section 1. The Charter of the City of Durham, the same being Chapter 671, 1975 Session Laws, as amended, is amended by adding the following new section:

"Sec. 102.5. *Owner of rental property shall authorize agent to accept service of process.* -- The City Council may, by ordinance, require that each owner of rental property within the city authorize a person residing in ~~the city~~ Durham County or a county bordering Durham County to serve as his or her agent for the purpose of accepting service of process; that the owner provide, on a form supplied by the Housing Services Department, the authorized agent's name, address, and phone number; and that the owner notify the Housing Services Department of any changes in the information provided not more than 10 days after such changes have occurred. Nothing in this section shall require an owner to designate an agent to accept service of process where the owner of the rental property resides within ~~the city.~~ Durham County."

Sec. 4. Sec. 2 of Chapter 651 of the 1993 Session Laws reads as rewritten:

"Sec. 2. (a) The City Council may, by ordinance, require that each owner of rental property within the city authorize a person residing in ~~the city~~ Buncombe County to serve as his or her agent for the purpose of accepting service of process in an action involving a violation of an ordinance adopted under Parts 5 or 6 of Article 19 of Chapter 160A of the General Statutes. The owner shall provide, on a form supplied by the city clerk, the authorized agent's name, address, and telephone number. The owner shall notify the city clerk of any changes in the information provided not more than 10 days after such changes have occurred. Nothing in this section requires an owner to designate an agent to accept service of process where the owner of the rental property resides within ~~the city.~~ Buncombe County.

(b) This section applies to the City of Asheville only."

Sec. 4.1. The City Council of the City of Fayetteville may, by ordinance, require that each owner of rental property within the city authorize a person residing in Cumberland County to serve as the owner's

agent for the purpose of accepting service of process in an action involving a violation of an ordinance adopted under Parts 5 or 6 of Article 19 of Chapter 160A of the General Statutes. The owner shall provide, on a form supplied by the Housing Services Department, the authorized agent's name, address, and phone number, and shall notify the Housing Services Department of any changes in the information provided not less than 10 days after such changes occur. Nothing in this section shall require an owner to designate an agent to accept service of process where the owner of the rental property resides within Cumberland County.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1995.

H.B. 798 **CHAPTER 321**

AN ACT TO REPEAL CERTAIN REQUIREMENTS PERTAINING TO MATERIALS USED IN CONJUNCTION WITH FOOD CONSUMPTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-309.10(d) reads as rewritten:

"(d) ~~(1)~~ No person shall distribute, sell, or offer for sale in this State any polystyrene foam product which is to be used in conjunction with food for human consumption unless such product is composed of material which is recyclable.

~~(2) After October 1, 1997, no person shall distribute, sell, or offer for sale in this State any polystyrene foam product that is to be used in conjunction with food for human consumption unless the Secretary certifies that at least twenty-five percent (25%) of such products are being recycled. This subdivision does not apply to any polystyrene foam product containing at least twenty-five percent (25%) polystyrene derived from products that have been collected for recycling after those products have served the purpose for which they were manufactured.~~"

Sec. 2. The Secretary of the Department of Environment, Health, and Natural Resources shall report to the General Assembly no later than March 1, 1997, on industry efforts to recycle polystyrene foam products.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1995.

S.B. 414 **CHAPTER 322**

AN ACT TO "OPT-IN" FOR INTERSTATE BRANCHING AUTHORITY UNDER THE RIEGLE-NEAL INTERSTATE BANKING AND BRANCHING EFFICIENCY ACT OF 1994, AND TO MAKE A CONFORMING CHANGE TO THE REVENUE LAWS.

Whereas, section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, provides that before June 1, 1997, states may enact legislation that expressly permits interstate branching legislation that applies equally to all banks; and

Whereas, the General Assembly of North Carolina enacted the North Carolina Interstate Branching Act as Chapter 191 of the 1993 Session Laws, in order to permit nationwide reciprocal interstate branching; and

Whereas, the General Assembly desires to conform the North Carolina Interstate Branching Act to Public Law 103-328 and to confirm that it elects to opt for immediate interstate branching authority; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Article 17A of Chapter 53 of the General Statutes is repealed.

Sec. 2. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 17B.

"Interstate Branch Banking.

"Part 1. Definitions.

"§ *53-224.9. Definitions.*

The following definitions apply in this Article:

(1) 'Acquisition of a branch' means the acquisition of a branch located in a host state without engaging in an 'interstate merger transaction' as defined in Part 2 of this Article.

(2) 'Bank' has the meaning set forth in 12 U.S.C. § 1813(h); provided that the term 'bank' shall not include any 'foreign bank' as defined in 12 U.S.C. § 3101(7), except that such term shall include any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(3) 'Bank holding company' has the meaning set forth in 12 U.S.C. § 1841(a)(1).

(4) 'Bank supervisory agency' means:

a. The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to these agencies; and

b. Any agency of another state with primary responsibility for chartering and supervising banks.

(5) 'Branch' means a full service office of a bank through which it receives deposits, checks are paid, or loans are made, other than its principal office. Any of the functions or services authorized to be engaged in by a bank may be carried out in an authorized branch office.

(6) 'Commissioner' means the Commissioner of Banks for the State of North Carolina.

(7) 'Control' has the meaning set forth in 12 U.S.C. § 1841(a)(2).

(8) 'De novo branch' means a branch of a bank located in a host state which (i) is originally established by the bank as a branch and (ii) does not become a branch of the bank as a result of (A) the acquisition of another bank or a branch of another bank, or (B) the merger, consolidation, or conversion involving any such bank or branch.

(9) 'Home state' means:

a. With respect to a national bank, the state in which the main office of the bank is located;

b. With respect to a state bank, the state by which the bank is chartered;

c. With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. § 103(c).

(10) 'Host state' means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain a branch.

(11) 'Interstate merger transaction' means:

a. The merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

b. The purchase of all or substantially all of the assets, including all or substantially all of the branches, of a bank whose home state is different from the home state of the acquiring bank.

(12) 'North Carolina bank' means a bank whose home state is North Carolina.

(13) 'North Carolina State bank' means a bank chartered under the laws of North Carolina.

(14) 'Out-of-state bank' means a bank whose home state is a state other than North Carolina.

(15) 'Out-of-state state bank' means a bank chartered under the laws of any state other than North Carolina.

(16) 'Resulting bank' means a bank that has resulted from an interstate merger transaction under this Article.

(17) 'State' means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

"Part 2. Interstate de novo Branching and Acquisition of Branches.

"*§ 53-224.10. Purpose.*

It is the express intent of this Part to permit interstate branching under sections 102 and 103 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, in accordance with the provisions in this Part.

"*§ 53-224.11. Interstate branching by North Carolina State banks.*

(a) With the prior approval of the Commissioner, any North Carolina State bank may establish and maintain a de novo branch or acquire a branch in a state other than North Carolina.

(b) A North Carolina State bank desiring to establish and maintain a branch in another state under this section shall file an application on a form prescribed by the Commissioner and pay the branch application fee prescribed by regulation pursuant to G.S. 53-122. If the Commissioner finds that the applicant has the financial resources sufficient to undertake the proposed expansion without adversely affecting its safety or soundness and that the establishment of the proposed branch is in the public interest, the Commissioner may approve the application. In acting on the application, the Commissioner shall consider the views of the appropriate bank supervisory agencies. The applicant bank may establish the branch when it has received the written approval of the Commissioner.

"§ 53-224.12. *Interstate branching by de novo entry.*

An out-of-state bank that does not have a branch in North Carolina and that meets the requirements of this Article may establish and maintain a de novo branch in this State.

"§ 53-224.13. *Interstate branching through the acquisition of a branch.*

An out-of-state bank that does not have a branch in North Carolina and that meets the requirements of this Article may establish and maintain a branch in this State through the acquisition of a branch.

"§ 53-224.14. *Requirement of notice and other conditions.*

(a) An out-of-state bank desiring to establish and maintain a de novo branch or to acquire a branch in this State shall provide written notice of the proposed transaction to the Commissioner not later than the date on which the bank applies to the responsible federal bank supervisory agency for approval to establish or acquire the branch. The filing of such notice shall be accompanied by the filing fee prescribed by the Commissioner by regulation.

(b) The out-of-state bank shall comply with the applicable requirements of Article 15 of Chapter 55 of the North Carolina General Statutes.

(c) Prior to June 1, 1997, an out-of-state bank may establish and maintain a de novo branch or may establish and maintain a branch through acquisition of a branch if:

(1) In the case of a de novo branch, the laws of the home state of the out-of-state bank permit North Carolina banks to establish and maintain de novo branches in that state under substantially the same terms and conditions as herein set forth; and

(2) In the case of a branch established through the acquisition of a branch, the laws of the home state of the out-of-state bank permit North Carolina banks to establish and maintain branches in that state through the acquisition of branches under substantially the same terms and conditions as herein set forth.

"§ 53-224.15. *Conditions for approval.*

In the case of notice under G.S. 53-224.14 by an out-of-state state bank, the notice shall be subject to approval by the Commissioner, which approval shall be effective only if:

(1) The bank confirms in writing to the Commissioner that as long as it maintains a branch in North Carolina, it will comply with all applicable laws of this State.

(2) The Commissioner, acting within 60 days after receiving notice of an application under G.S. 53-224.14, certifies to the responsible federal bank supervisory agency that the requirements of this Part have been met by the bank.

"*§ 53-224.16. Powers.*

(a) An out-of-state state bank which establishes and maintains one or more branches in North Carolina under this Article may conduct any activities at such branch or branches that are authorized under the laws of this State for North Carolina State banks, except to the extent such activities may be prohibited by other laws, regulations, or orders applicable to the out-of-state state bank.

(b) A North Carolina State bank may conduct any activities at a branch outside of North Carolina that are permissible for a bank chartered by the host state where the branch is located, except to the extent such activities are expressly prohibited by the laws of this State or by any regulation or order of the Commissioner applicable to the North Carolina State bank.

"Part 3. Interstate Bank Mergers.

"*§ 53-224.17. Purpose.*

It is the express intent of this Part to permit interstate branching by merger under section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, in accordance with the provisions of this Part.

"*§ 53-224.18. Authority of State banks to establish interstate branches by merger.*

With the prior approval of the Commissioner, a North Carolina State bank may establish, maintain, and operate one or more branches in a state other than North Carolina pursuant to an interstate merger transaction in which the North Carolina State bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant North Carolina State bank shall file an application on a form prescribed by the Commissioner and pay the fee prescribed by regulation pursuant to G.S. 53-122. The applicant shall also comply with the applicable provisions of G.S. 53-12. If the Commissioner finds that (i) the proposed transaction will not be detrimental to the safety and soundness of the applicant or the resulting bank, (ii) any new officers and directors of the resulting bank are qualified by character, experience, and financial responsibility to direct and manage the resulting bank, and (iii) the proposed merger is consistent with the convenience and needs of the communities to be served by the resulting bank in this State and is otherwise in the public interest, it shall approve the interstate merger transaction and the operation of branches outside of North Carolina by the North Carolina State bank. Such an interstate merger transaction may be consummated only after the applicant has received the Commissioner's written approval.

"*§ 53-224.19. Interstate merger transactions and branching permitted.*

One or more North Carolina banks may enter into an interstate merger transaction with one or more out-of-state banks under this Article, and an out-of-state bank resulting from such an interstate merger transaction may maintain and operate the branches in North Carolina of a merged North Carolina bank provided that the conditions and filing requirements of this Article are met.

"§ 53-224.20. *Notice and filing requirements.*

Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a North Carolina bank shall notify the Commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the Commissioner and pay the filing fee required by the Commissioner. All banks which are parties to such interstate merger transaction involving a North Carolina State bank shall comply with G.S. 53-12 and with other applicable state and federal laws. Any out-of-state bank which shall be the resulting bank in such an interstate merger transaction shall comply with Article 15 of Chapter 55 of the North Carolina General Statutes.

"§ 53-224.21. *Conditions for interstate merger prior to June 1, 1997.*

An interstate merger transaction prior to June 1, 1997, involving a North Carolina bank shall not be consummated, and any out-of-state bank resulting from such a merger shall not operate any branch in North Carolina, unless the laws of the home state of each out-of-state bank involved in the interstate merger transaction permits North Carolina banks under substantially the same terms and conditions as are set forth in Part 3 to acquire banks and establish and maintain branches in that state by means of interstate merger transactions.

"§ 53-224.22. *Powers.*

(a) An out-of-state state bank which establishes and maintains one or more branches in North Carolina under this Article may conduct any activities at such branch or branches that are authorized under the laws of this State for North Carolina State banks, except to the extent such activities may be prohibited by other laws, regulations, or orders applicable to the out-of-state state bank.

(b) A North Carolina State bank may conduct any activities at a branch outside of North Carolina that are permissible for a bank chartered by the host state where the branch is located, except to the extent such activities are expressly prohibited by the laws of this State or by any regulation or order of the Commissioner applicable to the North Carolina State bank.

"Part 4. Supervisory Authority.

"§ 53-224.23. *Applicability of supervisory authority.*

The supervisory powers and other provisions set forth in G.S. 53-224.24 through G.S. 53-224.31 shall apply to Parts 2 and 3 of this Article.

"§ 53-224.24. *Examinations; periodic reports; cooperative agreements; assessment of fees.*

(a) The Commissioner may make such examinations of any branch of an out-of-state state bank established under this Article and located in this State as the Commissioner may deem necessary to determine whether the branch is operating in compliance with the laws of this State and to ensure that the

branch is being operated in a safe and sound manner. The provisions of G.S. 53-117 apply to such examinations.

(b) The Commissioner may require periodic reports regarding any branch in North Carolina of an out-of-state bank to the extent that comparable reports are required from North Carolina State banks. Such reports shall be filed under oath with such frequency and in such scope and detail as may be appropriate for the purpose of assuring continuing compliance with the provisions of this Article.

(c) The Commissioner may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in North Carolina of an out-of-state state bank, or any branch of a North Carolina State bank in a host state, and the Commissioner may accept such parties' reports of examination and reports of investigation in lieu of conducting an additional examination or investigation. The Commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in North Carolina of an out-of-state state bank or any branch of a North Carolina State bank in any host state; provided, however, that the Commissioner may at any time take such actions independently if the Commissioner deems such actions to be necessary or appropriate to carry out the Commissioner's responsibilities under this Article and to ensure compliance with the laws of this State.

(d) Each out-of-state state bank that maintains one or more branches in this State may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this State and regulations of the Commissioner. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between such parties and the Commissioner.

"§ 53-224.25. *Enforcement.*

If the Commissioner determines that a branch maintained by an out-of-state state bank in this State is being operated in violation of any provision of the laws of this State, or that such branch is being operated in an unsafe and unsound manner, the Commissioner shall have the authority to take all such enforcement actions as the Commissioner would be empowered to take if the branch were a North Carolina State bank.

"§ 53-224.26. *Rules.*

The Commissioner, subject to review and approval of the North Carolina State Banking Commission, may adopt rules needed to implement this Article. Chapter 150B of the General Statutes governs the adoption of rules by the Commissioner.

"§ 53-224.27. *Additional branches.*

An out-of-state bank that has a branch in North Carolina may establish and acquire additional branches in this State to the same extent as a North Carolina State bank or to the same extent otherwise permitted by federal law.

"§ 53-224.28. *Notice of subsequent merger or other change in control.*

An out-of-state bank that maintains a branch in this State established pursuant to this Article shall give 30 days' prior written notice to the Commissioner of any merger, consolidation, or other transaction that would cause a change of control with respect to such out-of-state bank or any bank holding company that controls such bank, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 U.S.C. § 1817(j) or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or any successor statutes thereto.

"*§ 53-224.29. Branch closings.*

An out-of-state state bank that is subject to an order or written agreement revoking its authority to establish or maintain a branch in North Carolina and any North Carolina State bank that is subject to an order or written agreement revoking its authority to establish or maintain a branch in another state shall wind up the business of that branch in an orderly manner that protects the depositors, customers, and creditors of the branch and that complies with all North Carolina laws and all other applicable laws regarding the closing of the branch.

"*§ 53-224.30. Appeal of Commissioner's decision.*

Any aggrieved party in a proceeding under this Article may, within 30 days after final decision of the Commissioner, appeal such decision to the North Carolina State Banking Commission. The State Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove, or modify the Commissioner's decision. Failure of the State Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the State Banking Commission approving the decision of the Commissioner. Notwithstanding any other provision of law, any aggrieved party to a decision of the Commission shall be entitled to an appeal pursuant to G.S. 53-92.

"*§ 53-224.31. Severability.*

If any provision of this Article or the application of such provision is found invalid as to any bank, branch, bank holding company, person, or circumstances, or shall otherwise be deemed superseded by federal law, the remaining provisions of this Article shall not be affected and shall remain valid and in effect as to any bank, branch, bank holding company, person, or circumstance."

Sec. 2. G.S. 105-102.3 reads as rewritten:

"*§ 105-102.3. Banks.*

There is hereby imposed upon every bank or banking association, including each national banking association, that is operating in this State as a commercial bank, an industrial bank, a savings bank created other than under Chapter 54B of the General Statutes or the Home Owners' Loan Act of 1933 (12 U.S.C. §§ 1461-68), a trust company, or any combination of such facilities or services, and whether such bank or banking association, hereinafter to be referred to as a bank or banks, be organized, under the laws of the United States or the laws of North Carolina, in the corporate form or in some other form of business organization, an annual privilege tax in the amount of thirty dollars ($30.00) for each one million dollars ($1,000,000) or fractional part thereof of total assets held as hereinafter

provided. The assets upon which the tax is levied shall be determined by averaging the total assets shown in the four quarterly call reports of condition (consolidating domestic subsidiaries) for the preceding calendar year as required by bank regulatory authorities; provided, however, where a new bank commences operations within the State there shall be levied and paid an annual privilege tax of one hundred dollars ($100.00) until such bank shall have made four quarterly call reports of condition (consolidating domestic subsidiaries) for a single calendar year; provided further, however, where a bank operates an international banking facility, as defined in G.S. 105-130.5(b)(13), the assets upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States, as computed pursuant to G.S. 105-130.5(b)(13)c. For an out-of-state bank with one or more branches in this State, or for an in-state bank with one or more branches outside this State, the assets of the out-of-state bank or of the in-state bank upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the out-of-state bank or of the in-state bank which are employed outside this State. The tax imposed hereunder shall be for the privilege of carrying on the businesses herein defined on a statewide basis regardless of the number of places or locations of business within the State. Counties, cities and towns shall not levy a license or privilege tax on the businesses taxed under this section, nor on the business of an international banking facility as defined in subsection (b)(13) of G.S. 105-130.5."

Sec. 3. Section 2 of this act is effective July 1, 1995. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1995.

H.B. 656

CHAPTER 323

AN ACT TO MAKE AMENDMENTS TO THE RALEIGH CITY CHARTER AND TO ALLOW THE CITY OF RALEIGH TO IMPOSE CERTAIN REGULATIONS ON PORTIONS OF STATE SYSTEM HIGHWAYS.

The General Assembly of North Carolina enacts:

Section 1. Section 33 of the Raleigh City Charter, being Chapter 1184 of the 1949 Session Laws, and currently codified as Article 3.9 of the Raleigh City Charter, is hereby amended by adding a new subsection (c) to read:

"(c) Notwithstanding the provisions of subsection (a) of this section, nothing herein shall be construed as preventing any official or employee covered by this section from purchasing a utility service offered to the general public at uniform rates, sludge generated at a wastewater treatment plant, farm products grown on City-owned or City-leased farms, and mulch produced at the City's yard waste processing center."

Sec. 2. Notwithstanding the provisions of any other law, the City of Raleigh is hereby authorized to make applicable to State Highway System

rights-of-way its regulations and ordinances relating to loitering, panhandling, begging, and soliciting.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1995.

H.B. 229 **CHAPTER 324**

AN ACT TO APPROPRIATE FUNDS FOR THE CONTINUATION BUDGET OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

PART 1. INTRODUCTION AND TITLE OF ACT

INTRODUCTION

Section 1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the Executive Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

TITLE OF ACT

Sec. 1.1. This act shall be known as the Continuation Budget Operations Appropriations Act of 1995.

PART 2. GENERAL FUND APPROPRIATIONS

CURRENT OPERATIONS/GENERAL FUND

Sec. 2. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated are made for the biennium ending June 30, 1997, according to the schedule that follows. Amounts set out in brackets are reductions from General Fund appropriations for the 1995-96 and 1996-97 fiscal years.

Current Operations - General Fund	1995-96	1996-97
General Assembly	$ 27,313,680	$ 30,702,253
Judicial Department	276,398,840	279,352,847
Office of the Governor		
01. Office of the Governor	4,833,590	4,852,628
02. Office of State Budget and Management	3,442,164	3,578,579
03. Office of State Planning	1,791,079	1,793,484
04. Housing Finance Agency	2,300,000	2,300,000

Office of the Lieutenant Governor	577,313	578,729
Department of Secretary of State	4,580,487	4,632,853
Department of State Auditor	8,822,793	8,828,840
Department of State Treasurer		
01. State Treasurer	6,015,881	6,023,960
02. Special Contributions	7,477,187	7,477,187
Department of Public Education	3,923,051,726	3,988,143,700
Department of Justice	56,121,586	56,691,952
Department of Administration	52,039,811	53,294,727
Department of Agriculture	45,496,479	45,745,793
Department of Labor	15,054,312	14,902,477
Department of Insurance	18,425,166	18,466,396
Department of Transportation		
01. Aeronautics	9,434,000	10,047,210
02. Aid to Railroads	100,000	100,000
Total Department of Transportation	9,534,000	10,147,210
Department of Environment, Health, and Natural Resources	227,019,388	226,973,578
Office of Administrative Hearings	2,041,641	2,046,136
Rules Review Commission	262,661	262,661
Department of Human Resources		
01. Office of the Secretary	23,779,131	23,690,853
02. Division of Aging	12,925,967	12,926,726
03. Division of Child Development	120,137,472	126,951,341
04. Division of Services for the Deaf and Hard of Hearing	26,188,277	26,331,060
05. Division of Social Services	196,936,746	200,314,848
06. Division of Medical Assistance	1,045,077,626	1,169,772,076
07. Division of Services for the Blind	15,250,391	15,171,024
08. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	473,662,470	471,231,466
09. Division of Facility Services	9,198,369	9,126,950

10. Division of Vocational Rehabilitation Services	26,227,567	26,518,836
11. Division of Youth Services	70,789,456	69,313,553
Total Department of Human Resources	2,020,173,472	2,151,348,733
Department of Correction	763,430,258	791,407,879
Department of Commerce		
01. Commerce	34,228,031	34,105,893
02. Biotechnology Center	7,664,396	7,664,396
03. MCNC	19,765,000	19,765,000
04. Rural Economic Development Center	3,170,000	3,170,000
Department of Revenue	59,706,976	59,602,150
Department of Cultural Resources	44,125,706	45,025,630
Department of Crime Control and Public Safety	31,357,768	31,104,678
Office of the State Controller	8,718,487	8,727,680
University of North Carolina - Board of Governors		
01. General Administration	16,722,131	18,899,496
02. University Institutional Programs	6,768,790	6,768,790
03. Related Educational Programs	52,562,556	53,328,301
04. University of North Carolina at Chapel Hill		
a. Academic Affairs	150,770,266	152,080,756
b. Health Affairs	122,928,857	123,738,656
c. Area Health Education Centers	35,953,934	35,940,628
05. North Carolina State University at Raleigh		
a. Academic Affairs	192,700,104	196,389,163
b. Agricultural Research Service	39,164,075	38,914,625
c. Cooperative Extension Service	30,550,645	30,562,931
06. University of North Carolina at Greensboro	58,885,917	59,247,621
07. University of North Carolina at Charlotte	66,957,840	67,677,990
08. University of North Carolina at Asheville	19,076,572	19,359,219
09. University of North Carolina at Wilmington	37,224,302	37,856,024
10. East Carolina University		

a. Academic Affairs	83,972,256	84,540,347
b. Division of Health Affairs	39,646,521	39,694,687
11. North Carolina Agricultural and Technical State University	48,423,012	48,814,912
12. Western Carolina University	40,832,172	41,088,919
13. Appalachian State University	57,770,972	58,257,556
14. Pembroke State University	18,126,902	18,208,644
15. Winston-Salem State University	18,760,697	18,965,075
16. Elizabeth City State University	18,232,363	18,304,275
17. Fayetteville State University	23,116,271	23,295,616
18. North Carolina Central University	33,141,541	33,463,709
19. North Carolina School of the Arts	10,132,364	10,313,014
20. North Carolina School of Science and Mathematics	8,575,631	8,754,721
21. UNC Hospitals at Chapel Hill	44,561,955	44,561,955
Total University of North Carolina - Board of Governors	1,275,558,646	1,289,027,630
Department of Community Colleges	436,169,834	440,765,325
State Board of Elections	835,456	835,673
Contingency and Emergency	1,125,000	1,125,000
Reserve for Compensation Increase	2,000,000	2,000,000
Reserve for Salary Adjustments	1,000,000	1,500,000
Fixed Period for Amortization and Other Retirement Changes	(6,084,400)	(6,084,400)
Debt Service	116,805,051	115,113,536
GRAND TOTAL CURRENT OPERATIONS -- GENERAL FUND	$9,512,349,465	$9,763,000,793

PART 3. CURRENT OPERATIONS/HIGHWAY FUND

Sec. 3. Appropriations from the Highway Fund of the State for the maintenance and operation of the Department of Transportation, and for other purposes as enumerated, are made for the biennium ending June 30, 1997, according to the following schedule:

Current Operations - Highway Fund	1995-96	1996-97
Department of Transportation		
01. Administration	$36,479,381	$36,663,220
02. Division of Highways		
a. Administration and Operations	35,978,558	36,044,682
b. State Construction		
(01) Secondary Construction	73,900,000	75,563,941
(02) Urban Construction	20,000,000	20,000,000
(03) Access and Public Service Roads	2,000,000	2,000,000
(04) Spot Safety Improvements	9,100,000	9,100,000
c. State Funds to Match Federal Highway Aid		
(01) Construction	33,153,153	33,153,153
(02) Highway Planning/ Research	2,959,649	2,959,649
d. State Maintenance		
(01) Primary	106,146,405	106,146,405
(02) Secondary	185,554,790	185,554,790
(03) Urban	30,764,757	30,764,757
(04) Contract Resurfacing	89,127,392	89,127,392
e. Ferry Operations	17,947,994	17,947,994
03. Division of Motor Vehicles	81,572,443	79,937,436
04. Governor's Highway Safety Program	302,968	303,237
05. State Aid to Municipalities	73,900,000	75,563,941
06. State Aid for Public Transportation	10,246,921	10,246,921
07. State Aid for Railroads	800,000	800,000
08. Reserve for Salary Adjustments	200,000	200,000
09. Reserve for OSHA Deficiencies	425,000	425,000
10. Reserve for Increase in Travel Reimbursement Rate	200,000	200,000
11. Reserve for Asphalt Plant Cleanup	1,000,000	1,000,000
12. Reserve for Global Transpark Authority	750,000	750,000
13. Reserves for Employee Benefits		
a. Change in amortization period	(201,451)	(201,451)
b. Disability Income Plan increase	154,963	154,963
c. Fixed Period for Amortization and Other Retirement Changes	(154,963)	(154,963)
14. Transfer to Highway Trust Fund	12,100,000	32,300,000
15. Debt Service	25,133,780	4,978,215
Appropriations to Other State Agencies		
01. Crime Control and Public		

Safety	104,040,927	105,438,322
02. Other Agencies		
a. Department of Agriculture	3,025,401	3,162,344
b. Department of Revenue	2,268,383	2,270,054
c. Department of Environment, Health, and Natural Resources:		
LUST Trust Fund	6,119,216	6,162,602
Chemical Test Program	391,903	391,903
d. Department of Public Instruction	21,188,826	21,188,826
e. Department of State Treasurer	11,130,000	11,853,450
GRAND TOTAL CURRENT OPERATIONS -- HIGHWAY FUND	$ 997,706,396	$1,001,996,783

PART 4. HIGHWAY TRUST FUND

Sec. 4. Appropriations from the Highway Trust Fund are made for the fiscal biennium ending June 30, 1997, according to the following schedule:

Highway Trust Fund	1995-96	1996-97
01. Intrastate System	$295,184,649	$319,382,722
02. Secondary Roads Construction	61,918,898	64,954,983
03. Urban Loops	119,360,379	129,145,071
04. State Aid - Municipalities	30,971,755	33,510,697
05. Program Administration	20,996,319	21,852,527
06. Transfer to General Fund	170,000,000	170,000,000
GRAND TOTAL/HIGHWAY TRUST FUND	$698,432,000	$738,846,000

PART 5. GENERAL FUND/HIGHWAY FUND AVAILABILITY STATEMENTS/RESERVE FOR REPAIRS AND RENOVATIONS

Requested by: Senators Odom, Plyler, Perdue, Representatives Holmes, Esposito, Creech

BUDGET REFORM STATEMENTS

Sec. 5. The General Fund and availability used in developing the 1995-97 budget is as shown below:

(1) Composition of the 1995-97 beginning availability:

	($ Million)
a. Revenue collections in 1994-95 in excess of authorized estimates	$192.00
b. Unexpended appropriations during 1994-95 (reversions)	162.40
c. Balance brought forward	33.40
Subtotal	387.80

d. Transfer to Savings Reserve	96.90
e. Transfer to Reserve for Repair and Renovations	125.00
Ending Fund Balance	$ 165.9

		($ Million) 1995-96	($ Million) 1996-97
(2)	Beginning Unrestricted Fund Balance	$ 165.9	$ -
(3)	Revenues Based on Existing Tax Structure	10,019.6	10,658.1
(4)	94-95 Reserve for Tax Reductions	28.1	-
Changes:			
1.	Tax Reductions		
	(a) Personal Income	-235.0	-244.1
	(b) Intangibles Repeal	-124.4	-124.5
2.	Local Sales Tax - Local Government Commission	1.5	1.5
3.	Insurance Regulatory Charges	3.7	3.7
4.	Treasurer's Banking Fees	-.7	-.7
5.	Disproportionate Share Receipts	106.9	117.7
6.	Investment Income Electronic Fund Transfers	2.0	2.0
Availability		$9,967.6	$10,413.7

Requested by: Senators Odom, Plyler, Perdue

HIGHWAY FUND AVAILABILITY

Sec. 5.1. The Highway Fund appropriations availability used in developing the 1995-97 Highway Fund budget is shown below:

	1995-96	1996-97
Beginning Credit Balance	$ 19,382,000	$ -
Estimated Revenue	1,023,228,000	1,046,316,000
Reversions:		
Financial System Funds	1,300,000	
Ferry Credit Balance	200,000	
Capital Improvements	4,112,266	
Total Highway Fund Availability	**$1,048,222,266**	**$1,046,316,000**

Requested by: Representatives Holmes, Creech, Esposito, Senators Odom, Plyler, Perdue

REPAIRS RESERVE ACCOUNT CHANGES

Sec. 5.2. (a) G.S. 143-15.2 reads as rewritten:

"*§ 143-15.2. Use of General Fund credit balance.*

The State Controller shall reserve up to one-fourth of any unreserved credit balance, as determined on a cash basis, remaining in the General Fund at the end of each fiscal year to the Savings Reserve Account as provided in G.S. 143-15.3, unless that would result in the Savings Reserve Account having funds in excess of five percent (5%) of the amount appropriated the preceding year for the General Fund operating budget, including local government tax-sharing funds; in that case, only funds sufficient to reach the five percent (5%) level shall be reserved. The State Controller shall also reserve the ~~lesser~~ greater of (i) one-fourth of any unreserved credit balance, as determined on a cash basis, remaining in the General Fund and (ii) ~~one and one-half percent (1.5%)~~ three percent (3%) of the replacement value of all State buildings supported from the General Fund, at the end of each fiscal year to the Repairs and Renovations Reserve Account as provided in G.S. 143-15.3A. The General Assembly may appropriate that part of the anticipated General Fund credit balance not expected to be reserved to the Savings Reserve Account or the Repairs and Renovations Reserve Account only for capital improvements or other one-time expenditures. As used in this section, the term 'unreserved credit balance' means the credit balance amount, as determined on a cash basis, before funds are reserved by the Controller to the Savings Reserve Account or the Repairs and Renovations Reserve Account pursuant to G.S. 143-15.3 and G.S. 143-15.3A."

(b) G.S. 143-15.3A reads as rewritten:

"*§ 143-15.3A. Repairs and Renovations Reserve Account.*

(a) There is established a Repairs and Renovations Reserve Account as a restricted reserve in the General Fund. The State Controller shall reserve to the Repairs and Renovations Reserve Account the greater of (i) one-fourth of any unreserved credit balance as determined on a cash basis, remaining in the General Fund and (ii) three percent (3%) of the replacement value of all State buildings supported from the General Fund, at the end of each fiscal year. As used in this section, the term 'unreserved credit balance' means the credit balance amount, as determined on a cash basis, before funds are reserved by the Controller to the Savings Reserve Account or the Repairs and Renovations Reserve Account pursuant to this section and G.S. 143-15.3.

(b) The funds in the Repairs and Renovations Reserve Account shall be used only for the repair and renovation of State facilities and related infrastructure that are supported from the General Fund. Funds from the Repairs and Renovations Reserve Account shall be used only for the following types of projects:

(1) Roof repairs and replacements;

(2) Structural repairs;

(3) Repairs and renovations to meet federal and State standards;

(4) Repairs to electrical, plumbing, and heating, ventilating, and air-conditioning systems;
(5) Improvements to meet the requirements of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., as amended;
(6) Improvements to meet fire safety needs;
(7) Improvements to existing facilities for energy efficiency;
(8) Improvements to remove asbestos, lead paint, and other contaminants, including the removal and replacement of underground storage tanks;
(9) Improvements and renovations to improve use of existing space;
(10) Historical restoration;
(11) Improvements to roads, walks, drives, utilities infrastructure; and
(12) Drainage and landscape improvements.

Funds from the Repairs and Renovations Reserve Account shall not be used for new construction or the expansion of the footprint of an existing facility unless required in order to comply with federal or State codes or standards.

The Director of the Budget shall not use funds in the Repairs and Renovations Reserve Account unless the use has been approved by an act of the General Assembly."

(c) This section becomes effective June 30, 1995.

Requested by: Senators Odom, Plyler, Perdue, Representatives Holmes, Creech, Esposito

EXPENDITURE OF FUNDS FROM RESERVE FOR REPAIRS AND RENOVATIONS

Sec. 5.3. Of the funds in the Reserve for Repairs and Renovations for the 1995-96 fiscal year, forty-six percent (46%), shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S.143-15.3A, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina; and fifty-four percent (54%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143-15.3A.

Notwithstanding G.S. 143-15.3A, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

The Board of Governors and the Office of State Budget and Management shall submit to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office, for their review, the proposed allocation of these funds. Subsequent changes in the proposed allocations shall be reported prior to expenditure to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office.

PART 6. GENERAL PROVISIONS

Requested by: Representatives Holmes, Creech, Esposito, Senators Odom, Plyler, Perdue

SPECIAL FUNDS, FEDERAL FUNDS, AND DEPARTMENTAL RECEIPTS/AUTHORIZATION FOR EXPENDITURES

Sec. 6.1. There is appropriated out of the cash balances, federal receipts, and departmental receipts available to each department, sufficient amounts to carry on authorized activities included under each department's operations. All these cash balances, federal receipts, and departmental receipts shall be expended and reported in accordance with provisions of the Executive Budget Act, except as otherwise provided by statute, and shall be expended at the level of service authorized by the General Assembly. If the receipts, other than gifts and grants that are unanticipated and are for a specific purpose only, collected in a fiscal year by an institution, department, or agency exceed the receipts certified for it in General Fund Codes or Highway Fund Codes, then the Director of the Budget shall decrease the amount he allots to that institution, department, or agency from appropriations from that Fund by the amount of the excess, unless the Director of the Budget finds that the appropriations from the Fund are necessary to maintain the function that generated the receipts at the level anticipated in the certified Budget Codes for that Fund. Funds that become available from overrealized receipts in General Fund Codes and Highway Fund Codes, other than gifts and grants that are unanticipated and are for a specific purpose only, shall not be used for new permanent employee positions or to raise the salary of existing employees except:

(1) As provided in G.S. 116-30.1, 116-30.2, 116-30.3, 116-30.4, or 143-27; or

(2) If the Director of the Budget finds that the new permanent employee positions are necessary to maintain the function that generated the receipts at the level anticipated in the certified budget codes for that Fund. The Director of the Budget shall notify the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the chairmen of the appropriations committees of the Senate and the House of Representatives, and the Fiscal Research Division of the Legislative Services Office that he intends to make such a finding at least 10 days before he makes the finding. The notification shall set out the reason the positions are necessary to maintain the function.

The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter the General Fund Codes or Highway Fund Codes that did not result in a corresponding reduced allotment from appropriations from that Fund.

The Director of the Budget shall develop necessary budget controls, regulations, and systems to ensure that these funds and other State funds subject to the Executive Budget Act, are not spent in a manner which would cause a deficit in expenditures.

Pursuant to G.S. 143-34.2, State departments, agencies, institutions, boards, or commissions may make application for, receive, or disburse any form of non-State aid. All non-State monies received shall be deposited with the State Treasurer unless otherwise provided by State law. These funds shall be expended in accordance with the terms and conditions of the fund award that are not contrary to the laws of North Carolina.

Requested by: Representatives Holmes, Creech, Esposito, Senators Odom, Plyler, Perdue

INSURANCE AND FIDELITY BONDS

Sec. 6.2. All insurance and all official fidelity and surety bonds authorized for the several departments, institutions, and agencies shall be effected and placed by the Insurance Department, and the cost of placement shall be paid by the affected department, institution, or agency with the approval of the Insurance Commissioner.

Requested by: Senators Odom, Plyler, Perdue, Representatives Holmes, Creech, Esposito

CONTINGENCY AND EMERGENCY FUND ALLOCATION

Sec. 6.3. Of the funds appropriated in this act to the Contingency and Emergency Fund, the sum of nine hundred thousand dollars ($900,000) for the 1995-96 fiscal year and the sum of nine hundred thousand dollars ($900,000) for the 1996-97 fiscal year shall be designated for emergency allocations, which are for the purposes outlined in G.S. 143-23(a1)(3), (4), and (5). Two hundred twenty-five thousand dollars ($225,000) for the 1995-96 fiscal year and two hundred twenty-five thousand dollars ($225,000) for the 1996-97 fiscal year shall be designated for other allocations from the Contingency and Emergency Fund.

Requested by: Representatives Holmes, Creech, Esposito, Senators Odom, Plyler, Perdue

AUTHORIZED TRANSFERS

Sec. 6.4. The Director of the Budget may transfer to General Fund budget codes from the General Fund salary adjustment appropriation, and may transfer to Highway Fund budget codes from the Highway Fund salary adjustment appropriation, amounts required to support approved salary adjustments made necessary by difficulties in recruiting and holding qualified employees in State government. The funds may be transferred only when the use of salary reserve funds in individual operating budgets is not feasible.

Requested by: Representatives Holmes, Creech, Esposito, Senators Odom, Plyler, Perdue

EXPENDITURES OF FUNDS IN RESERVES LIMITED

Sec. 6.5. All funds appropriated by this act into reserves may be expended only for the purposes for which the reserves were established.

Requested by: Representatives Holmes, Creech, Esposito, Senators Odom, Plyler, Perdue

STATE MONEY RECIPIENTS/CONFLICT OF INTEREST POLICY

Sec. 6.6. Each private, nonprofit entity eligible to receive State funds, either by General Assembly appropriation, or by grant, loan, or other allocation from a State agency, before funds may be disbursed to the entity, shall file with the disbursing agency a notarized copy of that entity's policy addressing conflicts of interest that may arise involving the entity's management employees and the members of its board of directors or other governing body. The policy shall address situations where any of these individuals may directly or indirectly benefit, except as the entity's employees or members of the board or other governing body, from the entity's disbursing of State funds, and shall include actions to be taken by the entity or the individual, or both, to avoid conflicts of interest and the appearance of impropriety.

Requested by: Senators Odom, Plyler, Perdue, Representatives Gardner, Hayes, Holmes, Creech, Esposito

DISPOSITION OF DISPROPORTIONATE SHARE RECEIPTS

Sec. 6.8. For the 1995-97 fiscal biennium, as it receives funds associated with Disproportionate Share Payments from the State psychiatric hospitals, the Division of Medical Assistance shall deposit funds appropriated for the Medicaid program in a sum equal to the federal share of the Disproportionate Share Payments as nontax revenue. Any of these funds that are not appropriated by the General Assembly shall be reserved by the State Controller for future appropriation.

Requested by: Representatives Nichols, Mitchell, Weatherly, Crawford, Senators Martin of Pitt, Edwards

PROMPT STATE CHANGES FOLLOWING FEDERAL REGULATORY CHANGES

Sec. 6.9. Each agency shall monitor federal regulations that affect a program administered by the agency. If a federal regulation that affects a program administered by the agency is changed, the agency shall review its administrative rules adopted to implement the program to determine if the agency needs to change its rules in response to the change in the federal regulation.

If the agency's rules adopt the federal regulation by reference under G.S. 150B-21.6 and the adoption by reference includes future changes to the federal regulation, no agency action is needed. If the agency's rules do not adopt the federal regulation by reference or they adopt it by reference but the reference does not include future changes, the agency shall consider taking appropriate action to adopt a temporary rule under G.S. 150B-21.1 in response to the federal change.

Requested by: Representatives Weatherly, Mitchell, Crawford, Senators Martin of Pitt, Edwards

FAILURE TO INDICATE THE NUMBER OF COPIES PRINTED AND COST OF STATE DOCUMENT SUBJECTS AGENCY TO PRINTING BUDGET REDUCTION

Sec. 6.10. G.S. 143-170.1 is amended by adding a new subsection to read:

"(a3) If an agency fails to comply with this section, then the agency's printing budget for the fiscal year following the violation shall be reduced by ten percent (10%)."

PART 7. SALARIES AND BENEFITS

Requested by: Senators Odom, Plyler, Perdue, Representatives Holmes, Creech, Esposito

SALARY RELATED CONTRIBUTIONS/EMPLOYERS

Sec. 7.1. (a) Required employer salary-related contributions for employees whose salaries are paid from department, office, institution, or agency receipts shall be paid from the same source as the source of the employees' salaries. If an employee's salary is paid in part from the General Fund or Highway Fund and in part from department, office, institution, or agency receipts, required employer salary-related contributions may be paid from the General Fund or Highway Fund only to the extent of the proportionate part paid from the General Fund or Highway Fund in support of the salary of the employee, and the remainder of the employer's requirements shall be paid from the source that supplies the remainder of the employee's salary. The requirements of this section as to source of payment are also applicable to payments on behalf of the employee for hospital-medical benefits, longevity pay, unemployment compensation, accumulated leave, workers' compensation, severance pay, separation allowances, and applicable disability income and disability salary continuation benefits.

(b) Effective July 1, 1995, the State's employer contribution rates budgeted for retirement and related benefits as a percentage of covered salaries for the 1995-96 fiscal year are (i) ten and eighty-three hundredths percent (10.83%) - Teachers and State Employees; (ii) fifteen and eighty-three hundredths percent (15.83%) - State Law Enforcement Officers; (iii) nine and ten hundredths percent (9.10%) - University Employees' Optional Retirement Program; (iv) twenty-two and sixty-five hundredths percent (22.65%) - Consolidated Judicial Retirement System; and (v) twenty-three and twenty-seven hundredths percent (23.27%) - Legislative Retirement System. Each of the foregoing contribution rates includes two percent (2%) for hospital and medical benefits. The rate for State Law Enforcement Officers includes five percent (5%) for the Supplemental Retirement Income Plan. The rates for Teachers and State Employees, State Law Enforcement Officers, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan.

(c) The General Assembly authorizes the Board of Trustees of the Teachers' and State Employees' Retirement System to adopt a fixed amortization period of nine years for purposes of the unfunded accrued liability for the Retirement System.

(d) The maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 1995-96 fiscal year

and for the 1996-97 fiscal year to the Teachers' and State Employees' Comprehensive Major Medical Plan are: (i) Medicare-eligible employees and retirees - one thousand three hundred twenty-one dollars ($1,321); and (ii) Non-Medicare-eligible employees and retirees - one thousand seven hundred thirty-six dollars ($1,736).

PART 8. GENERAL ASSEMBLY

Requested by: Senators Warren, Davis, Representatives Ives, Lemmond, Culpepper

CONFIDENTIALITY OF REQUESTS FOR ASSISTANCE IN THE PREPARATION OF FISCAL NOTES

Sec. 8.1. (a) Article 17 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"*§ 120-131.1. Requests from legislative employees for assistance in the preparation of fiscal notes.*

(a) A request made to an employee of a State agency other than the General Assembly by an employee of the Fiscal Research Division for assistance in the preparation of a fiscal note is confidential. An employee of a State agency other than the General Assembly who receives such a request or who learns of such a request made to another employee of his or her agency shall reveal the existence of the request only to other employees of the agency to the extent that it is necessary to respond to the request, and to the employee's supervisor and to the Office of State Budget and Management. All documents prepared by the employee in response to the request of the Fiscal Research Division are also confidential and shall be kept confidential in the same manner as the original request.

(b) As used in this section, 'employee' means an employee or officer of a State agency.

(c) Violation of this section may be grounds for disciplinary action."

(b) This section becomes effective 30 days after ratification.

Requested by: Representatives Ives, Lemmond, Culpepper, Senators Warren, Davis

LRC STUDY TRANSFER OF ALL STATE VEHICLES TO MOTOR FLEET MANAGEMENT

Sec. 8.2. The Legislative Research Commission shall study the transfer of all State vehicles to the Division of Motor Fleet Management, Department of Administration.

The Legislative Research Commission may make an interim report, together with any legislative recommendations, on this study to the 1995 General Assembly, Regular Session 1996, and shall make a final report, together with any legislative recommendations, to the 1997 General Assembly.

Requested by: Senators Warren, Davis, Representatives Ives, Lemmond, Culpepper

LRC STUDY CIVILIANIZATION

Sec. 8.3. The Legislative Research Commission may study issues related to civilianizing certain State government law enforcement functions and positions, including the appropriate use of nonsworn, noncertified personnel in positions for which sworn status is not cost-effective or required. This study shall include the recommendations made by the Government Performance Audit Committee on civilianization to the 1993 General Assembly.

The Legislative Research Commission may make an interim report, including any legislative recommendations, to the 1995 General Assembly, Regular Session 1996, and shall make a final report, including any legislative recommendations, to the 1997 General Assembly.

PART 9. OFFICE OF THE GOVERNOR

Requested by: Representatives Ives, Lemmond, Senators Cochrane, Davis, Gulley

ELIMINATION OF THE OMBUDSMAN OFFICE IN THE OFFICE OF THE GOVERNOR

Sec. 9.2. The Office of Ombudsman in the Office of the Governor is abolished. No appropriated State funds shall be used to reestablish this office.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

HOME PROGRAM MATCHING FUNDS

Sec. 9.3. (a) Funds appropriated in this act to the Housing Finance Agency for the federal HOME Program shall be used to match federal funds appropriated for the HOME Program. In allocating State funds appropriated to match federal HOME Program funds, the Agency shall give priority to HOME Program projects, as follows:

(1) First priority to projects that are located in counties designated as severely distressed counties under G.S. 105-130.40(c) or G.S. 105-151.17(c); and

(2) Second priority to projects that benefit persons and families whose incomes are fifty percent (50%) or less of the median family income for the local area, with adjustments for family size, according to the latest figures available from the U.S. Department of Housing and Urban Development.

The Housing Finance Agency shall report to the Joint Legislative Commission on Governmental Operations by April 1 of each year concerning the status of the HOME Program and shall include in the report information on priorities met, types of activities funded, and types of activities not funded.

(b) If the United States Congress changes the HOME Program such that matching funds are not required for a given program year, then the Agency shall not spend the matching funds appropriated under this act for that program year.

(c) Funds appropriated in this act to match federal HOME Program funds shall not revert to the General Fund on June 30, 1996, or on June 30, 1997.

Requested by: Senators Warren, Davis, Representatives Ives, Lemmond, Culpepper

COUNCIL OF GOVERNMENT FUNDS

Sec. 9.4. (a) Of the funds appropriated in this act to the Office of State Planning, eight hundred sixty-four thousand two hundred seventy dollars ($864,270) for the 1995-96 fiscal year and eight hundred sixty-four thousand two hundred seventy dollars ($864,270) for the 1996-97 fiscal year shall only be used as provided by this section. Each regional council of government or lead regional organization is allocated up to forty-eight thousand fifteen dollars ($48,015) for each fiscal year, with the actual amount calculated as provided in subsection (b) of this section.

(b) The funds shall be allocated as follows: A share of the maximum forty-eight thousand fifteen dollars ($48,015) each fiscal year shall be allocated to each county and smaller city based on the most recent annual estimate of the Office of State Budget and Management of the population of that county (less the population of any larger city within that county) or smaller city, divided by the sum of the total population of the region (less the population of larger cities within that region) and the total population of the region living in smaller cities. Those funds shall be paid to the regional council of government for the region in which that city or county is located upon receipt by the Office of State Planning of a resolution of the governing board of the county or city requesting release of the funds. If any city or county does not so request payment of funds by June 30 of a State fiscal year, that share of the allocation for that fiscal year shall revert to the General Fund.

(c) A regional council of government may use funds appropriated by this section only to assist local governments in grant applications, economic development, community development, support of local industrial development activities, and other activities as deemed appropriate by the member governments.

(d) Funds appropriated by this section may not be used for payment of dues or assessments by the member governments and may not supplant funds appropriated by the member governments.

(e) As used in this section, "Larger City" means an incorporated city with a population of 50,000 or over. "Smaller City" means any other incorporated city.

PART 10. OFFICE OF STATE BUDGET AND MANAGEMENT

Requested by: Senators Warren, Davis, Representatives Ives, Lemmond, Culpepper

LINE ITEM BUDGETING CONTINUED

Sec. 10. (a) G.S. 143-11 reads as rewritten:

"*§ 143-11. Survey of departments.*

(a) On or before the fifteenth day of December, biennially in the even-numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend State funds, in

the interest of economy and efficiency, and of obtaining a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the budget for the next biennial period, he shall prepare their report in the form of a proposed budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed budget based on his own conclusions and judgment, and the Commission or any of its members retain the right to submit separately to the General Assembly such statement of disagreement and the particulars thereof as representing their views. The budget report shall contain a complete and itemized plan ~~in accordance with G.S. 143-10.3, 143-10.4, and 143-10.5~~ of all proposed expenditures for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receives or may receive for use and expenditure any State funds, in accordance with the classification of funds and accounts adopted by the State Controller, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each line item of the proposed expenditures, the budget shall show in separate parallel ~~columns the amount expended for the last preceding fiscal year, for the current fiscal year, and the increase or decrease,~~ columns:

(1) Proposed expenditures and receipts for each fiscal year of the biennium;

(2) The certified budget for the preceding fiscal year;

(3) The currently authorized budget for the preceding fiscal year;

(4) Actual expenditures and receipts for the most recent fiscal year for which actual expenditure information is available; and

(5) Proposed increases and decreases.

Revenue and expenditure information shall be no less specific than the two-digit level in the State Accounting System Chart of Accounts as prescribed by the State Controller. The budget shall clearly differentiate between general fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital improvements.

(b) The Director shall accompany the budget with:

(1) A budget message supporting his recommendations and outlining a financial policy and program for the ensuing biennium. The message will include an explanation of increase or decrease over past expenditures, a discussion of proposed changes in existing revenue laws and proposed bond issues, their purpose, the amount, rate of interest, term, the requirements to be attached to their issuance and the effect such issues will have upon the redemption and annual interest charges of the State debt.

(2) State Controller reports including:

a. An itemized and complete financial statement for the State at the close of the last preceding fiscal year ending June 30.

b. A statement of special funds.

(2a) A statement showing the itemized estimates of the condition of the State treasury as of the beginning and end of each of the next two fiscal years.

(3) A report on the fees charged by each State department, bureau, division, board, commission, institution, and agency during the previous fiscal year, the statutory or regulatory authority for each fee, the amount of the fee, when the amount of the fee was last changed, the number of times the fee was collected during the prior fiscal year, and the total receipts from the fee during the prior fiscal year.

(4) A statement showing the State Board of Education's request, in accordance with G.S. 115C-96, for sufficient funds to provide textbooks to public school students.

(5) A proposal for expenditure of the funds in the Repairs and Renovations Reserve Account, which is established in G.S. 143-15.3A. The Director shall consider the data from the Facilities Condition and Assessment Program in the Office of State Construction when establishing priorities for the proposed expenditure of these funds.

(6) Statements of the objections of members of the Council of State received pursuant to G.S. 143-10.3(b) to the performance measures, departmental operations plans, and indicators of program impact prepared in accordance with G.S. 143-10.3, 143-10.4, and 143-10.5.

(7) A list of the budget requests of members of the Council of State that are not included in the proposed budget.

It shall be a compliance with this section by each incoming Governor, at the first session of the General Assembly in his term, to submit the budget report with the message of the outgoing Governor, if he shall deem it proper to prepare such message, together with any comments or recommendations thereon that he may see fit to make, either at the time of the submission of the said report to the General Assembly, or at such other time, or times, as he may elect and fix.

The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget."

(b) The Director of the Budget developed a plan for preparing the 1995-97 fiscal biennium budget in a performance budget format. That performance budget covers the program areas of health and safety, environment, correction, justice, social and economic well-being, and economic development and commerce. The performance budget format for those areas shall be continued, but the performance budget format shall not be expanded to cover any additional areas.

The Office of State Budget and Management shall report to the 1995 General Assembly, 1996 Regular Session, regarding the effectiveness of performance budgeting and shall also recommend whether performance budgeting should be continued, and if continued, any modifications that should be made to performance budgeting.

Requested by: Representatives Ives, Lemmond, Culpepper, Senators Warren, Davis

ANALYSIS OF STATE GOVERNMENT ADMINISTRATIVE SPAN OF CONTROL

Sec. 10.1. The Office of State Budget and Management shall review and analyze the administrative span of control, or the ratio of supervisors to those supervised, exercised throughout State government, except for the Community College System and The University of North Carolina, to determine the average span of control, and to determine what the appropriate average should be. In this review, the Office of State Budget and Management shall consider the study produced for the 1993 General Assembly by the Government Performance Audit Committee on the issue of administrative span of control.

The Office of State Budget and Management shall report the results of this review, together with any recommendations, to the 1995 General Assembly, Regular Session 1996, within one week of its convening.

Requested by: Representatives Ives, Lemmond, Senator Warren

REVIEW OF DEPARTMENT FORMS AND REPORTS

Sec. 10.2. Article 1 of Chapter 143 of the General Statutes, the Executive Budget Act, is amended by adding a new section to read:

"*§ 143-10.7. Review of department forms and reports.*

The Director, through the Office of State Budget and Management, shall review on three-year cycles all internal and external forms and reports in use by State departments and institutions to confirm whether these forms and reports continue to be needed. If, during the review process, it is determined that these forms and reports are no longer necessary, or that they duplicate other forms or reports either in whole or in part, the Director shall have these forms and reports modified or eliminated. All departments shall provide the Director with copies of all forms and reports used, together with any additional information necessary for the review of these reports."

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

OSBM STUDY STATE-OWNED AIRCRAFT

Sec. 10.4. The Office of State Budget and Management shall study the use of State-owned aircraft and shall report the results of its study to the Joint Legislative Commission on Governmental Operations on or before April 1, 1996. The study shall include consideration of the following:

(1) For each Department, the number and type of aircraft, the number of pilots, and the number and type of support personnel for aircraft.

(2) For each Department, the budget for aircraft, the source of funding for aircraft, the number of hours the aircraft is available, and the number of hours the aircraft is used.

(3) The feasibility and desirability of consolidating any or all State-owned aircraft operations.

(4) The feasibility and desirability of sharing of aircraft by Departments.

(5) The feasibility and desirability of Departments' contracting for aircraft services rather than owning their own aircraft.
(6) Compilation and review of Departments' policies regarding authorized passengers on the aircraft and which Departmental personnel is responsible for determining which passengers are authorized.

Requested by: Representatives Holmes, Creech, Esposito, Senator Warren
DOWNSIZING GOVERNMENT EXPENDITURES REPORT

Sec. 10.5. (a) The Office of State Budget and Management shall report any direct and any indirect expenditures incurred since July 1, 1994, that are related to the downsizing of State government to the Joint Legislative Commission on Governmental Operations by September 30, 1995.

(b) Expenditures reported on shall include payment for accumulated leave, severance pay, moving expenses for employment at another State government agency, and expenses or referral services performed by the Office of State Personnel and the Employment Security Commission.

(c) In addition to the report required by subsection (a) of this section, the Office of State Budget and Management shall present to the 1995 General Assembly by May 1, 1996, documentation of all expenditures defined in subsections (a) and (b) of this section and identification of the funding sources in both the 1994-95 fiscal year and the 1995-96 fiscal year for all these expenditures.

PART 11. DEPARTMENT OF ADMINISTRATION

Requested by: Representatives Ives, Lemmond, Senator Warren
DOMESTIC VIOLENCE PROGRAMS

Sec. 11. All grantees receiving Domestic Violence grants from the Department of Administration shall meet the financial statement filing requirements of G.S. 143-6.1, regardless of the amount of their grants.

Requested by: Representatives Ives, Lemmond, Senator Warren
TRANSFER EXECUTIVE MANSION CURATOR FROM DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF CULTURAL RESOURCES

Sec. 11.1. The position of Executive Mansion Curator (position number 4129-0101-0006-125) is transferred from the Department of Administration to the Department of Cultural Resources. This transfer will permit the Department of Cultural Resources to better maintain the historical personal properties of the Executive Mansion. This provision does not affect, in any way, the jurisdiction of the Department of Administration over the Executive Mansion and its grounds.

Requested by: Representatives Ives, Lemmond, Culpepper, Senators Warren, Davis
TRANSFER NORTH CAROLINA ALLIANCE FOR COMPETITIVE TECHNOLOGIES (NCACTS)

Sec. 11.2. The North Carolina Alliance for Competitive Technologies (NCACTS) created by Executive Order No. 63 on September 26, 1994, is transferred from the Department of Administration to the Department of Commerce. All positions, property, unexpended balances of appropriations, allocations and other refunds, including the functions of budgeting and purchasing, for NCACTS are transferred from the Department of Administration to the Department of Commerce.

NCACTS shall report quarterly on its operations and performance to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division.

Requested by: Senators Ballance, Davis, Warren, Representatives Culpepper, Ives, Justus, Lemmond, Thompson

STUDY OF REPLACEMENT OF MOTOR VEHICLES

Sec. 11.3. The Department of Administration shall study the obsolescence and replacement of motor vehicles, including those used by law enforcement agencies, to determine the optimal replacement time. The replacement time shall be stated as optimal mileage or cost of operating the vehicle. The study shall include a review of industry standards when determining optimal replacement time. The Department shall include safety and efficiency of motor vehicle operations as an integral part of the study. The Department shall report its findings and recommendations to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division by March 1, 1996.

Requested by: Senators Warren, Davis, Representatives Ives, Lemmond, Culpepper

PARKING REVENUES

Sec. 11.4. The Secretary of Administration may use funds from parking revenues that are in excess of parking system expense requirements to fund the ten dollars ($10.00) per month subsidies for van pools and transit passes.

PART 12. DEPARTMENT OF CULTURAL RESOURCES

Requested by: Representatives Lemmond, Ives, Senator Warren

REVIEW PLANS FOR STATE HISTORIC SITES REQUESTING STATE FUNDS

Sec. 12. G.S. 121-12 reads as rewritten:

"§ *121-12. North Carolina Historical Commission.*

(a) Protection of Properties on National Register. -- It shall be the duty of the Historical Commission, meeting at such times and according to such procedures as it shall by rule prescribe, to provide an advisory and coordinative mechanism in and by which State undertakings of every kind that are potentially harmful to the cause of historic preservation within the State may be discussed, and where possible, resolved, giving due consideration to the competing public interests that may be involved. To this end, the head of any State agency having direct or indirect jurisdiction over a proposed State or state-assisted undertaking, or the head of any State

department, board, commission, or independent agency having authority to build, construct, operate, license, authorize, assist, or approve any State or state-assisted undertaking, shall, prior to the approval of any State funds for the undertaking, or prior to any approval, license, or authorization, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470.

Where, in the judgment of the Commission, an undertaking will have an effect upon any listed district, site, building, structure, area, or object, the head of the appropriate State agency shall afford the Commission a reasonable opportunity to comment with regard to such undertaking.

The Historical Commission shall act with reasonable diligence to insure that all State departments, boards, commissions, or agencies potentially affected by the provisions of this section be kept currently informed with respect to the name, location, and other significant particulars of any district, site, building, structure, or object listed or placed upon the National Register of Historic Places. Each affected State department or agency shall furnish, either upon its own initiative or at the request of the Historical Commission such information as may reasonably be required by the Commission for the proper implementation of this section.

(b) Criteria for State Historic Properties. -- The Commission shall prepare and adopt criteria for the evaluation of State historic sites and all other real and personal property which it may consider to be of such historic, architectural, archaeological, or cultural importance as would justify the acquisition and ownership thereof by the State of North Carolina, or for the extension of any assistance or aid thereto by the State, acting by itself or in connection with any county, city, corporation, organization, or individual. The Commission shall cooperate to the fullest practical extent with any local historical organization and with any city or county historic district properties commission. In evaluating whether a building should be a State historic site, the Commission shall request and review plans for the use and maintenance of the building.

(c) Criteria for State Aid to Historic Properties. -- The Commission shall also prepare and adopt criteria for the evaluation of all properties of historic or archaeological importance owned by, under option to, or being considered for acquisition by a county, city, historic properties commission, or other organization or individual for which State aid or assistance is requested from the Department of Cultural Resources. The Commission shall investigate, evaluate, and prepare a written report on all historic or archaeological property for which State aid or appropriations to be administered by the Department of Cultural Resources are proposed. If the property is a building, the Commission shall request and review the plans for the use, maintenance, operation, and purpose of the building and shall comment on the feasibility of the plans in the written report. This report, which shall be filed as a matter of record in the custody of the Department of Cultural Resources, shall set forth the following opinions or recommendations of the Commission:

(1) Whether the property is historically authentic;

(2) Whether it is of such educational, historical, or cultural significance as to be essential to the development of a balanced State program of historic and archaeological sites and properties;
(3) The estimated total cost of the project under consideration and the apportionment of said cost among State and nonstate sources;
(4) Whether practical plans have been or can be developed for the funding of the nonstate portion of the costs;
(5) Whether practical plans have been developed for the continued staffing, maintenance and operation of the property without State assistance;
(6) Such further comments and recommendations that the Commission may make.

(c1) Criteria for State Aid to Historical Museums. -- The Commission shall also prepare and adopt criteria for the evaluation of all interpretive, security or climate control programs or projects to be installed in nonprofit history museums for which State aid or assistance is requested from the Department of Cultural Resources. The Commission shall investigate, evaluate, and prepare a written report on all interpretive, security, or climate control programs or projects for which State appropriations to be administered by the Department of Cultural Resources are proposed. This report, which shall be filed as a matter of record in the custody of the Department of Cultural Resources, shall set forth the following opinions or recommendations of the Commission:

(1) The statewide educational significance and the qualitative level of the program or project and whether the program or project is essential to the development of a State program of historical interpretation;
(2) The local or regional need for such a program or project;
(3) The estimated total cost of the program or project under consideration and the apportionment of said cost among State and nonstate sources;
(4) Whether practical plans have been or can be developed for the funding of the nonstate portions of the costs;
(5) Whether practical plans have been developed for the continued staffing, maintenance, and operating of the museum without State assistance; and
(6) Such further comments and recommendations that the Commission may make.

(d) Commission to Furnish Recommendations to Legislative Committees. -- The Commission through the Department of Cultural Resources shall furnish as soon as practicable to the chairman of each legislative committee to which is referred any bill seeking an appropriation of State funds to the Department of Cultural Resources for the purpose of acquiring, preserving, restoring, or operating, or otherwise assisting, any property having historic, archaeological, architectural, or other cultural value or significance, and to the chairman of each legislative committee to which is referred any bill seeking an appropriation of State funds to the Department of Cultural Resources for the purpose of assisting a history museum, at least five copies

of a report on the findings and recommendations of the Commission relating to such property."

Requested by: Representatives Ives, Lemmond, Senator Warren
REPEAL ART WORKS IN STATE BUILDINGS REQUIREMENT

Sec. 12.2. Article 47A of Chapter 143 of the General Statutes is repealed.

Requested by: Representatives Ellis, Ives, Lemmond, Culpepper, Senators Warren, Davis
ARTS COUNCIL GRANTS

Sec. 12.4. Arts Council grants that are to be used for artworks shall include as a term of the grant that the artwork created with the grant funds shall not be displayed or performed in a publicly funded facility if the governing body of the community that would have zoning jurisdiction over the facility objects by resolution to the display or performance of the artwork in that community.

PART 13. DEPARTMENT OF INSURANCE

Requested by: Representatives Ives, Lemmond, Culpepper, Senators Warren, Davis
UNBUDGETED INSURANCE RECEIPTS REVERT TO GENERAL FUND

Sec. 13. Departmental receipts realized by the Department of Insurance in excess of amounts approved for expenditure by the General Assembly, as adjusted by the Office of State Budget and Management to reflect the distribution of statewide reserves, shall revert to the General Fund at the end of each fiscal year.

Requested by: Representatives Ives, Lemmond, Culpepper, Senators Warren, Davis
CONTINUATION OF FINANCIAL AUDIT OF THE DEPARTMENT OF INSURANCE

Sec. 13.2. The Office of State Auditor shall conduct a financial related audit of the Department of Insurance and its operations for the 1994-95 fiscal year. The audit shall be conducted in accordance with professional standards. The scope of the audit shall include, but is not limited to, following up on the findings and recommendations from the independent financial audit of the Department of Insurance contracted for pursuant to Section 9 of Chapter 769 of the 1993 Session Laws. The audit shall be completed on or before March 1, 1996.

PART 14. STATE BOARD OF ELECTIONS

Requested by: Representatives Ives, Lemmond, Senator Warren
COMPETITIVE BIDS FOR PRINTING AND DISTRIBUTING BALLOTS

Sec. 14. G.S. 163-136(b)(3) reads as rewritten:

"(3) For all elections, primaries, and referenda not specified in the two preceding subdivisions, by the State Board of Elections, at the expense of the State.

Provided, that the State Board of Elections, in its discretion, may direct some or all counties to print the ballots required by this subdivision under the supervision of the State Board of Elections. If the State Board of Elections prints and distributes the ballots required by this subdivision at the expense of the State, the State Board shall ~~have the authority to negotiate for the ballots to be printed and distributed on a regional or centralized basis, and the State Board shall be exempt from securing competitive bids~~ establish contracts through competition pursuant to Article 3 of Chapter 143 of the General Statutes for printing and distribution of all ballots, abstracts and precinct return forms."

PART 15. COLLEGES AND UNIVERSITIES

Requested by: Representatives Grady, Preston, Senators Plexico, Winner

AID TO STUDENTS ATTENDING PRIVATE COLLEGES PROCEDURE

Sec. 15. (a) Funds appropriated in this act to the Board of Governors of The University of North Carolina for aid to private colleges shall be disbursed in accordance with the provisions of G.S. 116-19, 116-21, and 116-22. These funds shall provide up to five hundred fifty dollars ($550.00) per full-time equivalent North Carolina undergraduate student enrolled at a private institution as of October 1 each year.

These funds shall be placed in a separate, identifiable account in each eligible institution's budget or chart of accounts. All funds in this account shall be provided as scholarship funds for needy North Carolina students during the fiscal year. Each student awarded a scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be for the tuition grant program as defined in subsection (b) of this section.

(b) In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to private educational institutions located within the State, or to students attending these institutions, there is granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, a sum, not to exceed one thousand two hundred fifty dollars ($1,250) per academic year, which shall be distributed to the student as hereinafter provided.

The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall not approve any grant until it receives proper certification from an approved institution that the student applying for the grant is an eligible student. Upon receipt of the certification, the State Education Assistance Authority shall remit at such times as it shall prescribe the grant to the approved institution on behalf, and to the credit, of the student.

In the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and credited grants paid on the behalf of the students.

In the event there are not sufficient funds to provide each eligible student with a full grant:

(1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a) and (b) of this section; and

(2) Each eligible student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

Any remaining funds shall revert to the General Fund.

(c) Expenditures made pursuant to this section may be used only for secular educational purposes at nonprofit institutions of higher learning.

Requested by: Representatives Grady, Preston, Senators Plexico, Winner

WAKE FOREST AND DUKE MEDICAL SCHOOL ASSISTANCE/FUNDING FORMULA

Sec. 15.1. Funds appropriated in this act to the Board of Governors of The University of North Carolina for continuation of financial assistance to the medical schools of Duke University and Wake Forest University shall be disbursed on certifications of the respective schools of medicine that show the number of North Carolina residents as first-year, second-year, third-year, and fourth-year students in each medical school as of November 1, 1995, and November 1, 1996. Disbursement to Wake Forest University shall be made in the amount of eight thousand dollars ($8,000) for each medical student who is a North Carolina resident, one thousand dollars ($1,000) of which shall be placed by the school in a fund to be used to provide financial aid to needy North Carolina students who are enrolled in the medical school. The maximum aid given to any student from this fund in a given year may not exceed the amount of the difference in tuition and academic fees charged by the school and those charged at the School of Medicine at the University of North Carolina at Chapel Hill.

Disbursement to Duke University shall be made in the amount of five thousand dollars ($5,000) for each medical student who is a North Carolina resident, five hundred dollars ($500.00) of which shall be placed by the school in a fund to be used to provide student financial aid to financially needy North Carolina students who are enrolled in the medical school. No individual student may be awarded assistance from this fund in excess of two thousand dollars ($2,000) each year. In addition to this basic disbursement for each year of the biennium, a disbursement of one thousand dollars ($1,000) shall be made for each medical student who is a North Carolina resident in the first-year, second-year, third-year, and fourth-year classes to

the extent that enrollment of each of those classes exceeds 30 North Carolina students.

The Board of Governors shall establish the criteria for determining the eligibility for financial aid of needy North Carolina students who are enrolled in the medical schools and shall review the grants or awards to eligible students. The Board of Governors shall adopt rules for determining which students are residents of North Carolina for the purposes of these programs. The Board shall also make any regulations as necessary to ensure that these funds are used directly for instruction in the medical programs of the schools and not for religious or other nonpublic purposes. The Board shall encourage the two schools to orient students towards primary care, consistent with the directives of G.S. 143-613(a). The two schools shall supply information necessary for the Board to comply with G.S. 143-613(d).

Requested by: Representatives Grady, Preston, Cummings, Senators Plexico, Winner, Little

AID TO STUDENTS ATTENDING PRIVATE COLLEGES/LEGISLATIVE TUITION GRANT LIMITATIONS

Sec. 15.2. (a) No Legislative Tuition Grant funds shall be expended for a program at an off-campus site of a private institution, as defined in G.S. 116-22(1), established after May 15, 1987, unless (i) the private institution offering the program has previously notified and secured agreement from other private institutions operating degree programs in the county in which the off-campus program is located or operating in the counties adjacent to that county or (ii) the degree program is neither available nor planned in the county with the off-campus site or in the counties adjacent to that county.

An "off-campus program" is any program offered for degree credit away from the institution's main permanent campus.

(b) Any member of the armed services as defined in G.S. 116-143.3(a), abiding in this State incident to active military duty, who does not qualify as a resident for tuition purposes as defined under G.S. 116-143.1, is eligible for a Legislative Tuition Grant pursuant to this section if the member is enrolled as a full-time student. The member's Legislative Tuition Grant shall not exceed the cost of tuition less any tuition assistance paid by the member's employer.

Requested by: Senators Plexico, Winner, Little, Representatives Grady, Preston, Cummings

EQUITY OF FUNDING

Sec. 15.3. The Commission on the Quality of Education in The University of North Carolina reported to the General Assembly that the funding system for appropriations to each campus for continuing operations, which constitutes the majority of General Fund support to higher education, is not based on identifiable criteria that are measurable or that allow comparisons of adequacy of funding among the 16 campuses.

The Board of Governors of The University of North Carolina shall review the equity of the continuation budget funding system, and the equity

of its methods of distributing the lump-sum expansion funds appropriated by the General Assembly. The Board of Governors shall assess the criteria that should be used in deriving an equitable funding system, such as comparisons of funding at like institutions, such factors as size of student body, the costs of the programs offered by each campus, the level of the student body (lower division, upper division, graduate), the resources required to meet the early college needs of entering students based on their relative preparations for college success, and any other factors deemed by the Board of Governors to be relevant to assuring successful student outcomes. In carrying out this review, the Board of Governors shall consult with the Office of State Budget and Management.

After its review, the Board of Governors shall propose a system of funding to the General Assembly which uses identifiable criteria which are based on educationally and financially sound principles. If the Board of Governors recommends changes in the current funding system, it shall also propose a plan and schedule for moving to the recommended system. The Board of Governors shall report its progress to the Joint Legislative Education Oversight Committee by April 15, 1996, and shall report its final findings and recommendations to the Joint Legislative Education Oversight Committee and the House and Senate Appropriations Subcommittees on Education by November 15, 1996.

Requested by: Senators Plexico, Winner, Little, Representatives Grady, Preston, Cummings

FULL-TIME EQUIVALENT STUDENTS (FTE)

Sec. 15.4. The Board of Governors of The University of North Carolina shall consider alternative approaches to funding University undergraduate and graduate enrollment, including the current funding of full-time equivalent students based on 12 semester hours annually for undergraduates, increasing this level to 15 semester hours annually, which would be consistent with graduating in four years, or funding the University on the basis of student credit hours rather than on full-time equivalent enrollment. The Board of Governors shall report its progress to the Joint Legislative Education Oversight Committee by April 15, 1996, and shall make its final recommendations regarding changes on enrollment funding to the Joint Legislative Education Oversight Committee and the House and Senate Appropriations Subcommittees on Education by November 15, 1996.

Requested by: Representatives Grady, Preston, Cummings, Senators Plexico, Winner, Little

EDUCATIONAL OPPORTUNITY

Sec. 15.5. The Board of Governors of The University of North Carolina shall consider different funding approaches to meeting the needs of an increasing pool of high school graduates, as well as adult learners unable to return to a university campus for additional education. Such methods as funding additional credit hours above the current levels for summer school and for off-campus degree programs on a basis more comparable to the current regular term funding, the application of distance learning technologies, collaboration with the community colleges and the private

colleges in the State, and other possibilities should be explored by the Board. The study shall consider the increased utilization of campus facilities, and it shall consider the use of financial resources and financial incentives to provide additional higher education opportunities at off-campus locations. The Board of Governors shall recommend a plan to provide for additional educational opportunities in the summer and at off-campus locations across the State, including any funding mechanisms necessary to accomplish these goals.

The Board of Governors shall report its progress to the Joint Legislative Education Oversight Committee by January 31, 1996, and shall make a final report of its findings and recommendations to the Joint Legislative Education Oversight Committee and the House and Senate Appropriations Subcommittees on Education by April 15, 1996.

Requested by: Representatives Grady, Preston, Cummings, Senators Plexico, Winner, Little

INCENTIVE FUNDING

Sec. 15.6. The Board of Governors of The University of North Carolina shall study various methods to provide funding incentives for the campuses when they accomplish specifically stated performance goals in the improvement of the quality of undergraduate education. As a part of this study, the Board of Governors of The University of North Carolina shall consider whether the ability of the campuses to retain some portion of their reversions each year under current management flexibility statutes should be tied to specific institutional gains toward prestated student performance goals.

If the Board of Governors finds that incentive funding could be a positive element in the higher education funding system in North Carolina, the Board of Governors shall recommend a model for a proposed system of incentive funding to the Joint Legislative Education Oversight Committee and the House and Senate Appropriations Subcommittees on Education by April 15, 1996. A monitoring system to provide an evaluation of performance back to the Board of Governors and to the General Assembly shall be a part of any proposal. The Board may propose such a model in its future budget proposals to the Governor and the General Assembly.

Requested by: Senators Plexico, Winner, Little, Representatives Grady, Preston, Cummings

EPA REDUCTIONS

Sec. 15.7. The Board of Governors of The University of North Carolina shall provide a list of all positions exempt from the State Personnel Act (EPA) to be eliminated by this act to the General Assembly by June 25, 1995. In preparing the list, the Board of Governors shall reduce EPA nonteaching positions on a pro rata basis, except for the constituent institutions. For the constituent institutions, the EPA nonteaching reductions shall be applied only to the extent that the full-time equivalent (FTE) EPA nonteaching positions per FTE student at each institution exceeds one one-hundredth of a position. EPA nonteaching positions in excess of one one-hundredth per FTE student shall be reduced on a pro rata basis. The Board of Governors shall reduce mid-level management

positions, and shall avoid eliminating librarians, student advisors, financial aid counselors, and other positions which provide direct services to students, to the extent possible. Campuses or other entities without sufficient vacancies to implement this reduction may substitute positions subject to the State Personnel Act (SPA) or may reduce nonpersonnel budgetary items. Institutions must identify SPA positions or any items substituted by June 25, 1995, and must indicate why EPA vacancies were insufficient.

Requested by: Representatives Grady, Preston, Senators Plexico, Winner

CONTINUING EDUCATION UNC-CH HEALTH AFFAIRS

Sec. 15.8. The University of North Carolina at Chapel Hill Health Affairs shall charge continuing education fees that are reasonably expected to cover a higher percentage of the costs of those professional programs. Health care professionals in those areas that are likely to generate substantial revenue or clientele shall pay a higher proportion of costs for continuing education.

Requested by: Representatives Grady, Preston, Cummings, Senators Plexico, Winner, Little

REWARDING FACULTY TEACHING

Sec. 15.9. The Board of Governors shall design and implement a system to monitor faculty teaching workloads on the campuses of the constituent institutions.

The Board of Governors shall direct constituent institutions that teaching be given primary consideration in making faculty personnel decisions regarding tenure, teaching, and promotional decisions for those positions for which teaching is the primary responsibility. The Board shall assure itself that personnel policies reflect this direction.

The Board of Governors shall develop a plan for rewarding faculty who teach more than a standard academic load.

The Board of Governors shall review the procedures used by the constituent institutions to screen and employ graduate teaching assistants. The Board shall direct that adequate procedures be used by each constituent institution to ensure that all graduate teaching assistants have the ability to communicate and teach effectively in the classroom.

The Board of Governors shall report on the implementation of this section to the Joint Legislative Education Oversight Committee by April 15, 1996.

Requested by: Senators Plexico, Winner, Little, Representatives Grady, Preston, Cummings

STUDY POTENTIAL COST SAVINGS TO UNC THROUGH PRIVATIZATION OF CERTAIN SERVICES

Sec. 15.10. The Board of Governors of The University of North Carolina, in consultation with the constituent institutions and affiliated organizations, shall study the potential for cost savings by contracting for various services with private contractors, including housekeeping and maintenance of physical facilities.

East Carolina University is currently realizing savings from privatizing the management of its housekeeping services. The General Assembly has reviewed requests for funding to operate approximately 2.8 million square feet of new or renovated space for the 1995-97 biennium. With this amount of new space opening up, the potential for cost savings by initially contracting for certain services to operate these facilities appears worth reviewing.

The Board of Governors shall report on the potential for increased efficiency and budget savings from the use of private contractual services to the Joint Legislative Education Oversight Committee by April 15, 1996. The Board shall identify and include in its report that portion of any savings that is attributable to lower pay scales or lower workers' benefits paid by potential private contractors.

Requested by: Senators Plexico, Winner, Little, Representatives Grady, Preston, Cummings

COMPREHENSIVE PLAN FOR HIGHER EDUCATION ENROLLMENT

Sec. 15.12. (a) The Education Cabinet shall develop a comprehensive plan to meet the projected increase in higher education enrollments that result from the increased number of high school graduates and nontraditional students needing worker retraining. The plan shall address questions of capacity and potential increases in space utilization. The plan shall also consider several funding strategies to encourage more balanced enrollment, such as funding additional credit hours above current levels for summer school and for off-campus degree programs, and incentive funding for private colleges to enroll more North Carolina residents.

The Education Cabinet shall also coordinate the planning efforts of the Board of Governors of The University of North Carolina, the Department of Community Colleges, and the North Carolina Association of Private and Independent Colleges and Universities to meet the projected increase in higher education enrollments.

A representative from the North Carolina Association of Private and Independent Colleges and Universities shall participate in the deliberations and decision-making of the Education Cabinet in accordance with G.S. 116C-1. The Board of Governors and the Department of Community Colleges shall provide staff assistance to the Education Cabinet in the development of the comprehensive plan. The Education Cabinet shall estimate the fiscal impact of all alternatives and proposals for dealing with the projected enrollment.

The Education Cabinet shall make a preliminary report on the comprehensive plan to the Joint Education Oversight Committee by April 15, 1996, and shall submit a final report to the Committee by November 15, 1996.

(b) G.S. 116C-1(b) reads as rewritten:

"(b) The Education Cabinet shall consist of the Governor, who shall serve as chair, the President of The University of North Carolina, the State Superintendent of Public Instruction, the Chairman of the State Board of Education, and the President of the North Carolina Community College

System. The Education Cabinet shall invite representatives of private education to participate in its deliberations as adjunct members."

Requested by: Senators Plexico, Winner, Little, Representatives Grady, Preston, Cummings

INSTITUTE OF GOVERNMENT BUDGET CATEGORIES

Sec. 15.13. The Institute of Government's faculty hold regular full-time faculty appointments in the Institute and devote their full time to teaching, consulting, and engaging in research and writing that supports and informs their teaching and consulting activities. In recognition of the Institute's status as a regular freestanding academic unit of the University of North Carolina at Chapel Hill that makes its own faculty appointments and conducts its own program of teaching, research, and consultation, the Director of the Budget shall transfer the budget appropriations in the Institute of Government from Purpose Code 142 to Purpose Code 105 and shall transfer its budget appropriations for teaching faculty salaries from Object Code 1110 to Object Code 1310. The transfer shall become effective July 1, 1995, and shall apply beginning with the 1995-97 biennial budget and hereafter.

PART 16. COMMUNITY COLLEGES

Requested by: Representatives Grady, Preston, Senators Plexico, Winner

BOOKS AND EQUIPMENT APPROPRIATIONS/REVERT AFTER ONE YEAR

Sec. 16. G.S. 115D-31 is amended by adding a new subsection to read:

"(c) State funds appropriated to the State Board of Community Colleges for equipment and library books shall revert to the General Fund 12 months after the close of the fiscal year for which they were appropriated. Encumbered balances outstanding at the end of each period shall be handled in accordance with existing State budget policies. The Department shall identify to the Office of State Budget and Management the funds that revert at the end of the 12 months after the close of the fiscal year."

Requested by: Representatives Grady, Preston, Senators Plexico, Winner

COMMUNITY COLLEGE FUNDING FLEXIBILITY

Sec. 16.1. A local community college may use all State funds allocated to it, except for Literacy Funds and Funds for New and Expanding Industries, for any authorized purpose that is consistent with the college's Institutional Effectiveness Plan. Each local community college shall submit an Institutional Effectiveness Plan that indicates to the State Board of Community Colleges how the college will use this funding flexibility to meet the demands of the local community and maintain a presence in all previously funded categorical programs.

Requested by: Representatives Grady, Preston, Senators Plexico, Winner

COURSE REPETITION POLICY FOR FIRE, RESCUE, AND POLICE PERSONNEL

Sec. 16.2. The course repetition policy adopted by the State Board of Community Colleges in accordance with Section 102(a) of Chapter 321 of the 1993 Session Laws does not apply to fire, rescue, or law enforcement training courses taken by fire, rescue, or law enforcement personnel.

Requested by: Representatives Grady, Preston, Senators Plexico, Winner

PENALTY FOR AUDIT EXCEPTIONS MODIFIED

Sec. 16.3. The audit policies of the State Board of Community Colleges shall provide that if a community college is in violation of a State or federal law or of a State Board rule or policy, the program auditors shall cite the college for an audit exception and not a concern. The State Board shall assess a twenty-five percent (25%) fiscal penalty in addition to the audit exception on all audits of both dollars and student membership hours excepted, unless the State Board finds that the audit exception was caused only by a processing or clerical error; no penalty shall be assessed in the case of a processing or clerical error.

The president of each community college shall present the findings of the college's program audit to the board of trustees of the college.

Requested by: Representatives Grady, Preston, Senators Plexico, Winner

MULTI-ENTRY/MULTI-EXIT CLASSES IN PRISONS AUTHORIZED

Sec. 16.4. G.S. 115D-5(c1) reads as rewritten:

"(c1) Community colleges shall report full-time equivalent (FTE) student hours for correction education programs on the basis of contact hours rather than student membership hours. No community college shall operate a multi-entry/multi-exit class or program in a prison ~~facility.~~ facility, except for a literacy class or program.

The State Board shall work with the Department of Correction on offering classes and programs that match the average length of stay of an inmate in a prison facility."

Requested by: Representatives Grady, Preston, Cummings, Senators Plexico, Little, Winner

MODIFY 1994-95 FACULTY SALARY LIMITATIONS

Sec. 16.5. (a) Section 18.6 of Chapter 769 of the 1993 Session Laws is repealed.

(b) Funds appropriated by the General Assembly for the 1995-96 fiscal year for the purpose of community college faculty salary increases shall be used only to provide community college faculty with salary increases.

Requested by: Representatives Grady, Preston, Senators Plexico, Winner

CENSUS REPORTING DATES

Sec. 16.6. (a) For the 1995-96 fiscal year, the census dates for reporting student membership hours for curriculum and occupational extension classes shall be at the thirty percent (30%) point of the class and at the ten percent (10%) point of the class which typically coincides with the end of each college's drop-add period. It is the intent of the General Assembly to determine during the Regular 1996 Session which census date shall be used in computing FTE enrollment.

(b) This section does not apply to courses offered on a contact-hour basis.

Requested by: Representatives Grady, Preston, Senators Plexico, Winner
STATE BOARD RESERVE FUNDS

Sec. 16.7. The State Board of Community Colleges shall use one-half of its Board Reserve for the 1995-96 fiscal year for expenses incurred during the North Carolina Community College System's conversion from the quarter credit system to the semester credit system.

PART 17. PUBLIC SCHOOLS

Requested by: Representatives Grady, Preston, Senators Winner, Plexico
PUBLIC SCHOOLS WORKERS' COMPENSATION

Sec. 17. (a) Salaries for positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund shall be increased from the General Fund or Highway Fund appropriation only to the extent of the proportionate part of the salaries paid from the General Fund or Highway Fund.

(b) G.S. 115C-337(a) reads as rewritten:

"(a) Workers' Compensation Act Applicable to School Employees. -- The provisions of the Workers' Compensation Act shall be applicable to all school employees, and the State Board of Education shall make ~~such~~ arrangements ~~as~~ necessary to carry out the provisions of the Workers' Compensation Act applicable to ~~such~~ these employees paid from State school funds. Liability of the State for compensation shall be confined to school employees paid by the State from State school funds for injuries or death caused by accident arising out of and in the course of their employment in connection with the state-operated school term. The State shall be liable for ~~said~~ this compensation on the basis of the average weekly wage of ~~such~~ the employees as defined in the Workers' Compensation Act, ~~whether all of said compensation for the school term is paid from State funds or in part supplemented by local funds,~~ to the extent of the proportionate part of each employee's salary that is paid from State funds. The State shall also be liable for workers' compensation for all school employees employed in connection with the teaching of vocational agriculture, home economics, trades and industries, and other vocational subjects, supported in part by State and federal funds, which liability shall cover the entire period of service of ~~such employees,~~ these employees, to the extent of the proportionate part of each employee's salary that is paid from State funds. The local school administrative units shall be liable for workers' compensation for school employees, including lunchroom employees, whose salaries or wages are paid by ~~such~~ the local units from local or special funds. ~~Such~~ The local units ~~are authorized and empowered to~~ may provide insurance to cover ~~such~~ this compensation liability and to include the cost of ~~such~~ this insurance in their annual budgets.

The provisions of this subsection shall not apply to any person, ~~firm~~ firm, or corporation making voluntary contributions to schools for any purpose,

and ~~such~~ the person, firm, or corporation shall not be liable for the payment of any sum of money under this Chapter."

Requested by: Representatives Grady, Preston, Senators Winner, Plexico
USE OF SUBSTITUTE TEACHER FUNDS FOR LEAVE FROM SICK LEAVE BANKS

Sec. 17.1. State funds for substitute teachers shall be used to pay for substitute teachers on days that teachers use sick leave from voluntary sick leave banks established in accordance with G.S. 115C-336(b).

Requested by: Representatives Grady, Preston, Senator Plexico
OUTCOME-BASED EDUCATION PROGRAM REPEALED

Sec. 17.2. Part 5 of Article 16 of Chapter 115C of the General Statutes is repealed.

Requested by: Senators Winner, Plexico, Little, Representatives Grady, Preston, Cummings
CAREER DEVELOPMENT

Sec. 17.3. (a) Funds appropriated to the State Board of Education for local school administrative units receiving career development funds for the 1995-96 and 1996-97 fiscal years shall be used only to ensure that individual employees do not receive less on a monthly basis in salary and State-funded bonuses during the 1995-96 fiscal year or during the 1996-97 fiscal year than they received on a monthly basis during the 1994-95 fiscal year, so long as the employees qualify for bonuses under the local differentiated pay plan. The State Board of Education may also use funds appropriated to State Aid to Local School Administrative Units for the 1995-96 and 1996-97 fiscal years as is necessary to hold individual employees harmless as provided in this subsection.

(b) Funds appropriated for local school administrative units receiving career development funds for the 1994-95 fiscal year that did not revert on June 30, 1995, shall not be used for expenses other than the costs of holding individual employees harmless as provided in subsection (a) of this section.

(c) If funds are necessary to hold teachers harmless after the 1996-97 fiscal year, the General Assembly urges the Governor to include these funds in the continuation budget request.

Requested by: Representatives Grady, Preston, Senators Winner, Plexico
TEACHER LEAVE IN CASES OF CATASTROPHIC ILLNESS

Sec. 17.4. G.S. 115C-336 is amended by adding a new subsection to read:

"(c) The State Board of Education shall also adopt rules and regulations to authorize an employee who requires a substitute to use annual leave on days that students are in attendance if the employee has exhausted all of the employee's sick leave and if the employee's absence is due to the catastrophic illness of the employee. The employee shall not be required to pay the substitute."

Requested by: Senators Winner, Plexico, Little, Representatives Grady, Preston, Cummings

IMPLEMENTATION OF THE REORGANIZATION OF THE DEPARTMENT OF PUBLIC INSTRUCTION

Sec. 17.5. Notwithstanding G.S. 143-23 or any other provision of law, the State Board of Education shall reorganize the Department of Public Instruction in accordance with the reorganization plan adopted by the State Board of Education and submitted to the General Assembly in May 1995, and to implement the base budget reduction in this act of nine million three hundred eighteen thousand four hundred thirty-six dollars ($9,318,436) for the 1995-96 fiscal year and ten million six hundred sixty-five thousand two hundred twenty dollars ($10,665,220) for the 1996-97 fiscal year.

Requested by: Senators Winner, Plexico, Little, Representatives Grady, Preston, Cummings

LEGISLATIVE INTENT TO USE SAVINGS FROM THE REORGANIZATION OF THE DEPARTMENT OF PUBLIC INSTRUCTION FOR EXPANSION BUDGET APPROPRIATIONS FOR THE PUBLIC SCHOOLS

Sec. 17.6. It is the intent of the General Assembly to appropriate in the expansion budget for the 1995-97 fiscal biennium for State Aid to Local School Administrative Units all funds saved in this act by reorganizing the Department of Public Instruction. These funds shall be used for classroom services for pupils only.

Requested by: Senators Winner, Plexico, Little, Representatives Grady, Preston, Cummings

TRANSFER FUNDS FOR TACS TO LOCAL SCHOOL ADMINISTRATIVE UNITS

Sec. 17.7. Effective July 1, 1996, the State Board of Education shall reallocate funds from Technical Assistance Centers to local school administrative units in accordance with a formula adopted by the State Board. Local boards of education may use these funds to contract with Technical Assistance Centers, contract with other entities, hire personnel, or otherwise acquire staff development, training, planning, and other forms of technical assistance.

The Technical Assistance Centers shall be funded solely by receipts from local boards of education and from other non-State sources. The State Board shall establish a management structure for the Technical Assistance Centers that enables superintendents, principals, and teachers from the local school administrative units to be served by the Centers to have input into the priorities and personnel decisions at the Centers.

Requested by: Senators Plexico, Winner, Little, Representatives Grady, Preston, Cummings

SITE-BASED MANAGEMENT TASK FORCE/STAFF

Sec. 17.8. (a) Effective July 1, 1995, G.S. 115C-238.7 reads as rewritten:

"§ 115C-238.7. Creation of the Task Force on Site-Based ~~Management; appointment of a Director of the Task Force of Site-Based Management.~~ Management.

(a) There is created the Task Force on Site-Based Management ~~within the Department of Public Instruction.~~ under the State Board of Education.

The Task Force shall be composed of ~~21~~ 20 members appointed as follows:

(1) The Superintendent of Public Instruction;

(2) One member of the State Board of Education appointed by the State Board of Education;

(3) Two members of the Senate appointed by the President Pro Tempore of the Senate;

(4) Two members of the House of Representatives appointed by the Speaker of the House of Representatives;

(5) One member of a local board of education appointed by the President Pro Tempore of the Senate after receiving recommendations from The North Carolina State School Boards Association, Inc.;

(6) One member of a local board of education appointed by the Speaker of the House of Representatives after receiving recommendations from The North Carolina State School Boards Association, Inc.;

(7) One local school superintendent appointed by the President Pro Tempore of the Senate after receiving recommendations from the North Carolina Association of School Administrators;

(8) One local school superintendent appointed by the Speaker of the House of Representatives after receiving recommendations from the North Carolina Association of School Administrators;

(9) One school principal appointed by the President Pro Tempore of the Senate after receiving recommendations from the Tar Heel Association of Principals/Assistant Principals and the Division of Administrators of the North Carolina Association of Educators;

(10) One school principal appointed by the Speaker of the House of Representatives after receiving recommendations from the Tar Heel Association of Principals/Assistant Principals and the Division of Administrators of the North Carolina Association of Educators;

(11) One school teacher appointed by the President Pro Tempore of the Senate after receiving recommendations from the North Carolina Association of Educators, Inc., the North Carolina Federation of Teachers, and the Professional Educators of North Carolina, Inc.;

(12) One school teacher appointed by the Speaker of the House of Representatives after receiving recommendations from the North Carolina Association of Educators, Inc., the North Carolina Federation of Teachers, and the Professional Educators of North Carolina, Inc.;

~~(13) The Director of the Task Force on Site-Based Management, appointed by the Superintendent of Public Instruction in accordance with subsection (d) of this section;~~

(14) One parent of a public school child appointed by the Superintendent of Public Instruction;

(15) Two at-large members appointed by the Superintendent of Public Instruction;

(16) One representative of business and industry appointed by the Governor;

(17) One representative of institutions of higher education appointed by the Board of Governors of The University of North Carolina; and

(18) One county commissioner appointed by the Superintendent of Public Instruction after receiving recommendations from the North Carolina Association of County Commissioners.

Members of the Task Force shall serve for two-year terms.

All members of the Task Force shall be voting members. Vacancies in the appointed membership shall be filled by the officer who made the initial appointment. The ~~Director of the~~ Task Force on Site-Based Management shall select a member of the Task Force to serve as chair of the Task Force.

Members of the Task Force shall receive travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1, G.S. 138-5, and G.S. 138-6.

(b) The Task Force shall:

(1) ~~Monitor~~ Advise the State Board of Education on the implementation of the School Improvement and Accountability Act of 1989, as amended, especially the development and implementation of building-level plans;

(2) Advise the ~~Director of the Task Force on Site-Based Management~~ State Board of Education on how to provide training and assistance to the public schools so as to facilitate the implementation of site-based management;

(3) Review publications produced by the Department of Public Instruction on the development and implementation of building-level plans;

(4) Report annually to the ~~General Assembly and the Joint Legislative Education Oversight Committee~~ State Board of Education on the implementation of site-based management in the public schools on the first Friday in December. This report may contain a summary of recommendations for changes to any law, rule, and policy that would improve site-based management.

(c) The Department of Public Instruction ~~shall~~ shall, with the approval of the State Board of Education, provide staff to the Task Force at the request of the Task Force.

(d) The ~~State Superintendent of Public Instruction~~ State Board of Education shall appoint a Director of the Task Force on Site-Based Management. ~~The Director shall direct a program in the Department of Public Instruction to provide training and assistance to the public schools to facilitate the implementation of site-based management.~~

~~The Director shall supervise such site-based management specialists from each of the six technical assistance centers of the Department of Public Instruction as may be assigned by the State Superintendent. The specialists shall work directly with the local school administrative units and with school-based committees to provide them with training and assistance to facilitate the implementation of site-based management. The specialists shall coordinate their activities with the central office.~~"

(b) The State Board of Education shall develop a plan for the reconfiguration of staff development activities, with an emphasis on assistance to schools.

Requested by: Senators Plexico, Winner, Little, Representatives Grady, Preston, Cummings

TEACHER ACADEMY TRANSFER/UNC LEADERSHIP PROGRAMS

Sec. 17.9. (a) The Task Force on Teacher Staff Development established by Section 141 of Chapter 321 of the 1993 Session Laws, all funds appropriated by the General Assembly for the Task Force and the Teacher Academy Program, and all resources and personnel provided for the Task Force and the Teacher Academy Program by the Department of Public Instruction are transferred from the Department of Public Instruction to The University of North Carolina. This transfer shall have all of the elements of a Type I transfer, as that term is defined in G.S. 143A-6(a). Where a conflict arises in connection with the transfer, the transfer shall be resolved by the Governor, and the decision of the Governor shall be final.

The Task Force is renamed the North Carolina Teacher Academy Board of Trustees.

The Board of Governors of The University of North Carolina shall delegate to the Board of Trustees all the powers and duties the Board of Governors considers necessary or appropriate for the effective discharge of the functions of the North Carolina Teacher Academy.

(b) Subsection (g) of Section 141 of Chapter 321 of the 1993 Session Laws is repealed.

(c) The North Carolina Teacher Academy Board of Trustees shall establish a statewide network of high quality, integrated, comprehensive, collaborative, and substantial professional development for teachers, which shall be provided through summer programs.

(d) The Board of Trustees shall consist of 20 members appointed as follows:

(1) The Superintendent of Public Instruction or the Superintendent's designee;

(2) One member of the State Board of Education appointed by the Chair of the State Board;

(3) One member of the Board of Governors of The University of North Carolina appointed by the Chair of the Board of Governors;

(4) The Director of the North Carolina Center for the Advancement of Teaching;

(5) Two deans of Schools of Education appointed by the President of The University of North Carolina;

(6) Four public school teachers appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom teaches in preschool through grade 2, one of whom teaches in grades 3 through 5, one of whom teaches in grades 6 through 8, and one of whom teaches in grades 9 through 12;

(7) Four public school teachers appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, one of whom teaches in preschool through grade 2, one of whom teaches in grades 3 through 5, one of whom teaches in grades 6 through 8, and one of whom teaches in grades 9 through 12;

(8) Two public school teachers appointed by the Governor;

(9) One superintendent of a local school administrative unit appointed by the Governor;

(10) Two public school principals appointed by the Governor; and

(11) The President of the North Carolina Association of Independent Colleges and Universities, or a designee.

(e) Members appointed prior to September 1, 1995, shall serve until June 30, 1997, except that the terms of members appointed pursuant to subdivisions (6) and (7) of subsection (d) of this section shall expire June 30, 1995. Subsequent appointments shall be for four-year terms, except that two of the members appointed by the 1995 General Assembly pursuant to subdivision (6) of subsection (d) of this section and two of the members appointed by the 1995 General Assembly pursuant to subdivision (7) of subsection (d) of this section shall serve for two-year terms.

Members may serve two consecutive four-year terms.

Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

The Board of Trustees shall elect a new chair every two years from its membership. The chair may serve two consecutive two-year terms as chair.

(f) The chief administrative officer of the Teacher Academy shall be a director appointed by the Board of Trustees.

(g) The Board of Trustees shall collaborate and coordinate its programming with NCCAT.

(h) The Board of Trustees shall report on its summer programs to the Joint Legislative Education Oversight Committee prior to November 1, 1995.

(i) G.S. 120-123 is amended by adding a new subdivision to read:

"(63) The Teacher Academy Board of Trustees, as established by Section 17.9 of House Bill 229 of the 1995 General Assembly."

(j) This section becomes effective September 1, 1995, except that the General Assembly may make appointments pursuant to subsection (d) of this section prior to September 1, 1995.

Sec. 17.9A. The Board of Governors of The University of North Carolina shall study the operation, organization, and governance of the programs operated by the Board, affiliated entities, or its constituent institutions, that provide ongoing professional development and continuing

education for public school teachers and administrators. The Board shall include in its study the North Carolina Center for the Advancement of Teaching, the Teacher Academy, the Principals' Executive Program, the Math-Science Education Network, and other groups identified by the Board. The Board shall develop a plan for the provision of continuing education and professional development for public school teachers and administrators, including location and governance of the various functions. The Board shall consult with the State Board of Education in developing this plan.

The Board shall report the results of its study and plan to the Joint Education Oversight Committee by April 15, 1996.

Requested by: Senators Plexico, Winner, Little, Representatives Grady, Preston, Cummings

COSTS OF REORGANIZATION

Sec. 17.10. The State Board of Education, with the approval of the Director of the Budget, shall use funds from the following sources to cover the costs incurred in accordance with G.S. 126-4(7a) related to the separation of Department of Public Instruction employees and the salaries and support of any positions that will be eliminated prior to January 1, 1996:

(1) Refunds from local school administrative units of funds allocated for the 1994-95 fiscal year; and

(2) Funds carried forward from the 1994-95 fiscal year from State Aid to Local School Administrative Units.

If these funds are not adequate to cover the costs, the State Board may also use unexpended funds appropriated for the 1995-96 fiscal year for State Aid to Local School Administrative Units.

Requested by: Senators Winner, Plexico, Little, Representatives Grady, Preston, Cummings

CHILD NUTRITION SERVICES

Sec. 17.11. (a) The 16 personnel positions in the Department of Public Instruction that have responsibility in the areas of the Child and Adult Food Program and the Summer Food Program are transferred from Department of Public Instruction to the Maternal and Child Health Section of the Department of Environment, Health, and Natural Resources.

Where a conflict arises in connection with the transfer, the transfer shall be resolved by the Governor, and the decision of the Governor shall be final.

(b) This section becomes effective October 1, 1995.

Requested by: Senators Winner, Plexico, Little, Representatives Grady, Preston, Cummings

TRANSFER OF NORTH CAROLINA EDUCATION STANDARDS AND ACCOUNTABILITY COMMISSION

Sec. 17.12. (a) The North Carolina Education Standards and Accountability Commission is transferred from the Office of the Governor to the State Board of Education. This transfer shall have all of the elements of a Type II transfer, as that term is defined in G.S. 143A-6(b).

(b) G.S. 115C-105.1 reads as rewritten:

"§ *115C-105.1. Creation of the Commission.*

The General Assembly believes that all children can learn. The General Assembly further believes that all graduates of North Carolina public schools should have mastered the skills required to become productive members of the workforce and succeed in life. The General Assembly further believes that having a highly qualified workforce is essential to strengthening North Carolina's competitive position in the modern world economy, improving workforce productivity, and ensuring a more prosperous future for all our citizens. With that mission as its guide, the General Assembly creates the North Carolina Education Standards and Accountability Commission.

The Commission shall be located administratively ~~in the Office of the Governor~~ under the State Board of Education but shall exercise all its prescribed statutory powers independently of the ~~Office of the Governor.~~ State Board of Education."

Requested by: Senators Winner, Plexico, Little, Representatives Grady, Preston, Cummings

TRANSFER OF NORTH CAROLINA STANDARDS BOARD FOR PUBLIC SCHOOL ADMINISTRATION

Sec. 17.13. (a) The North Carolina Standards Board for Public School Administration is transferred from the Office of the Governor to the State Board of Education. This transfer shall have all of the elements of a Type II transfer, as that term is defined in G.S. 143A-6(b).

(b) G.S. 115C-290.4(a), as rewritten by Chapter 116 of the 1995 Session Laws, reads as rewritten:

"(a) The North Carolina Standards Board for Public School Administration is created. The Standards Board shall be located for administrative purposes in the ~~Office of the Governor.~~ State Board of Education. The Standards Board shall exercise its powers independently of ~~that Office.~~ the State Board of Education."

Requested by: Senators Winner, Plexico, Little, Representatives Grady, Preston, Cummings

REPORTS ON REORGANIZATION

Sec. 17.14. The State Board of Education shall report on a quarterly basis, beginning September 1, 1995, to the Joint Legislative Education Oversight Committee on its progress in reorganizing the Department of Public Instruction, transfers of funds and positions necessitated by the reorganization, and recommended statutory changes necessary to enable the Board to complete the reorganization and to implement the Board's proposed accountability model.

Requested by: Senators Winner, Plexico, Hartsell, Little, Representatives Grady, Preston, Cummings

SUBSTITUTE TEACHER PAY

Sec. 17.15. (a) G.S. 115C-12(8) reads as rewritten:

"(8) Power to Make Provisions for Sick ~~Leave.~~ Leave and for Substitute Teachers. -- The Board shall provide for ~~a minimum of five days~~

~~per school year term of~~ sick leave with pay for all public school employees in accordance with the provisions of this Chapter and shall promulgate rules and regulations providing for necessary substitutes on account of ~~said~~ sick ~~leave.~~ leave and other teacher absences.

The pay for a substitute shall be fixed by the Board. If a teacher assistant assigned to a classroom in kindergarten through third grade acts as a substitute teacher for that classroom, the salary of the teacher assistant for the day shall be the same as the daily salary of an entry-level teacher with an 'A' certificate.

The Board may provide to each local school administrative unit not exceeding one percent (1%) of the cost of instructional services for the purpose of providing substitute teachers for those on sick leave as authorized by law or by regulations of the Board, but not exceeding the provisions made for other State employees."

(b) Substitute teachers who are not certified as teachers but have worked as teacher assistants in the public schools shall be paid at the same rate as substitute teachers who are not certified as teachers but have previously taken teacher effectiveness training.

PART 18. DEPARTMENT OF TRANSPORTATION

Requested by: Representatives Barbee, Bowie, Senator Hoyle

GENERAL SERVICES FOR THE DEPARTMENT OF TRANSPORTATION CONSOLIDATED

Sec. 18. The Facilities Management Branch of the Division of Highways and the General Services Branch of the Division of Motor Vehicles shall be merged into the General Services Division of the Department of Transportation. The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee on or before October 31, 1995, concerning the merger of these three agencies and the savings resulting from the consolidation and elimination of duplication.

Requested by: Representatives Barbee, Bowie, Senator Hoyle

ADOPT-A-HIGHWAY PROGRAM

Sec. 18.1. Chapter 136 of the General Statutes is amended by adding a new section to read:

"*§ 136-140.1. Adopt-A-Highway.*

(a) Notwithstanding any other provision of this Article, the Department of Transportation may permit individuals or groups participating in its Adopt-A-Highway Program access to controlled access facilities for the purpose of removing litter from the right-of-way. Acknowledgment of participation in the program may be indicated by appropriate signs that shall be owned, controlled, and erected by the Department of Transportation. The size, style, specifications, and content of the signs shall be determined in the sole discretion of the Department of Transportation. The Department of Transportation may issue rules and policies necessary to administer the program.

(b) Adopt-A-Highway participants may use contract services to clean the roadside of the sections of highway the participants have adopted only in accordance with the rules and policies issued by the Department of Transportation."

Requested by: Representatives Barbee, Bowie, Senators Hoyle, Hartsell

RAILROAD DIVIDEND USES SUBMITTED AS PART OF ANNUAL DEPARTMENT OF TRANSPORTATION BUDGET

Sec. 18.2. G.S. 136-16.6 reads as rewritten:

"*§ 136-16.6. Continuing rail appropriations.*

(a) There is annually appropriated one hundred percent (100%) of the annual dividends received in the prior fiscal year by the State from its ownership of stock in the North Carolina Railroad Company ~~and the Atlantic and North Carolina Railroad Company~~ to the Highway Fund for use by the Department of Transportation for railroad purposes.

(b) The Department of Transportation shall include in its annual budget the purposes for which the annual dividends received by the State from its ownership of stock in the North Carolina Railroad Company will be used.

These purposes may include the following project types to be included in the annual Transportation Improvement Program:

(1) Track and signal improvements for passenger service.
(2) Rail passenger stations and multimodal transportation centers.
(3) Grade crossing protection, elimination, and hazard removal.
(4) Rail rolling stock cars and locomotives.
(5) Rail rehabilitation.
(6) Industrial rail access.

The Department of Transportation shall use these funds to supplement but not supplant funds allocated for projects approved as part of the Transportation Improvement Program."

Requested by: Representatives Barbee, Bowie, Senator Hoyle

GLOBAL TRANSPARK AUTHORITY TO REIMBURSE HIGHWAY FUND FROM FEDERAL SOURCES

Sec. 18.3. When funds are provided from the Highway Fund to the Global TransPark Authority for environmental impact statements or assessments and the Global TransPark Authority applies for and receives reimbursement for those expenses from federal sources up to one million eight hundred thousand dollars ($1,800,000), the federal reimbursements shall be paid over by the Global TransPark Authority into the Highway Fund within 30 days of receipt. These funds shall be allocated to State-funded maintenance appropriations in the manner approved by the Board of Transportation.

Requested by: Representatives Barbee, Bowie, Senator Hoyle

AIRCRAFT AND FERRY ACQUISITIONS

Sec. 18.4. Before approving the purchase of an aircraft from the Equipment Fund or a ferry in a Transportation Improvement Program, the Board of Transportation shall prepare an estimate of the operational costs and capital costs associated with the addition of the aircraft or ferry and shall

report those additional costs to the General Assembly pursuant to G.S. 136-12(b), and to the Joint Legislative Commission on Governmental Operations.

Requested by: Representatives Barbee, Bowie, Senator Hoyle

SOME FERRY OPERATIONAL FUNDS REVERTED

Sec. 18.5. Of the unencumbered funds appropriated for Ferry Operations as of June 30, 1995, two hundred thousand dollars ($200,000) shall revert to the Highway Fund.

Requested by: Representatives Barbee, Bowie, Senator Hoyle

DEPARTMENT OF TRANSPORTATION TO PAY DEPARTMENT OF CORRECTION ONLY FOR ACTUAL MEDIUM CUSTODY INMATE LABOR

Sec. 18.6. The Department of Transportation shall pay the Department of Correction only for the actual labor performed by medium custody inmates.

Requested by: Senators Hoyle, Hartsell, Representatives Barbee, Bowie

VISITOR CENTER OPERATIONAL FUNDS

Sec. 18.7. (a) G.S. 20-79.7(c)(2) reads as rewritten:

"(2) From the funds remaining in the Special Registration Plate Account after the deductions in accordance with subdivision (1) of this subsection, there is appropriated from the Special Registration Plate Account the sum of ~~three hundred twenty-five thousand dollars ($325,000) for the 1993-94 fiscal year and the sum of three hundred seventy-five thousand dollars ($375,000) for the 1994-95 fiscal year~~ four hundred fifty thousand dollars ($450,000) for the 1995-96 fiscal year to provide operating assistance for the Visitor and Welcome Centers:

a. on U.S. Highway 17 in Camden County, ($75,000);
b. on U.S. Highway 17 in Brunswick County, ($75,000);
c. on U.S. Highway 441 in Macon County, ($75,000);
d. in the Town of Boone, Watauga County, ($75,000); ~~and~~
e. on U.S. Highway 29 in Caswell County, ~~($25,000) for the 1993-94 fiscal year and ($75,000) for the 1994-95 fiscal year,~~ ($75,000); and
f. on U.S. Highway 70 in Carteret County, ($75,000)."

(b) The Joint Legislative Transportation Oversight Committee shall investigate the continued use of the Special Registration Plate Fund as a source of operational funds for visitors centers and shall report the results of that investigation to the 1996 Session of the General Assembly.

Requested by: Representatives Barbee, Bowie, Senator Hoyle

HIGHWAY FUND ALLOCATIONS BY CONTROLLER

Sec. 18.8. The Controller of the Department of Transportation shall allocate at the beginning of each fiscal year from the various appropriations made to the Department of Transportation in this act, Titles:

State Construction

State Funds to Match Federal Highway Aid
State Maintenance
Ferry Operations,

sufficient funds to eliminate all overdrafts on State maintenance and construction projects, and these allocations shall not be diverted to other purposes.

Requested by: Representatives Barbee, Bowie, Senator Hoyle

CASH FLOW HIGHWAY FUND AND HIGHWAY TRUST FUND APPROPRIATIONS

Sec. 18.9. (a) The General Assembly authorizes and certifies anticipated revenues of the Highway Fund as follows:

For Fiscal Year 1997-98	$1,075.6 Million
For Fiscal Year 1998-99	$1,093.1 Million

(b) The General Assembly authorizes and certifies anticipated revenues of the Highway Trust Fund as follows:

For Fiscal Year 1997-98	$ 775.8 Million
For Fiscal Year 1998-99	$ 799.8 Million

Requested by: Representatives Barbee, Bowie, Senator Hoyle

HIGHWAY FUND LIMITATIONS ON OVEREXPENDITURES

Sec. 18.10. (a) Overexpenditures from Section 3 of this act may be made by authorization of the Director of the Budget, Titles:

State Construction Primary Construction
State Construction Urban Construction
Spot Safety Construction
State Construction Access and Public Service Roads
State Funds to Match Federal Highway Aid
State Maintenance
Ferry Operations,

provided that there are corresponding underexpenditures from these same Titles. Overexpenditures or underexpenditures in any Titles shall not vary by more than ten percent (10%) without prior consultation with the Advisory Budget Commission. Written reports covering overexpenditures or underexpenditures of more than ten percent (10%) shall be made to the Joint Legislative Transportation Oversight Committee. The reports shall be delivered to the Director of the Fiscal Research Division not less than 96 hours prior to the beginning of the Commission's full meeting.

(b) Overexpenditures from Section 3 of this act, Titles:

State Construction Primary Construction
State Construction Urban Construction
Spot Safety Construction
State Construction Access and Public Service Roads
State Funds to Match Federal Highway Aid
State Maintenance
Ferry Operations,

for the purpose of providing additional positions shall be approved by the Director of the Budget and shall be reported on a quarterly basis to the Joint

Legislative Transportation Oversight Committee and to the Fiscal Research Division.

Requested by: Representatives Barbee, Bowie, Senator Hoyle
RESURFACED ROADS MAY BE WIDENED

Sec. 18.11. Of the contract maintenance resurfacing program funds appropriated in this act to the Department of Transportation, an amount not to exceed fifteen percent (15%) of the Board of Transportation's allocation of these funds may be used for widening existing narrow pavements that are scheduled for resurfacing.

Requested by: Representatives Barbee, Bowie, Senators Hoyle, Hartsell
SMALL URBAN CONSTRUCTION PROGRAM DISCRETIONARY FUNDS

Sec. 18.12. Of the funds appropriated in this act to the Department of Transportation, fourteen million dollars ($14,000,000) shall be allocated in each fiscal year for small urban construction projects. These funds shall be allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for the small urban construction program for small urban construction projects that are located within the area covered by a one-mile radius of the municipal corporate limits. Discretionary funds of six million dollars ($6,000,000) shall be used statewide for rural or small urban highway improvements as approved by the Secretary of the Department of Transportation.

None of these funds used for rural secondary road construction are subject to the county allocation formula as provided in G.S. 136-44.5.

The Department of Transportation shall report to the members of the General Assembly on projects funded pursuant to this section in each member's district prior to the Board of Transportation's action. The Department shall make a quarterly comprehensive report on the use of these funds to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division.

Requested by: Representatives Barbee, Bowie, Senator Hoyle
HIGHWAY FUND ADJUSTMENTS TO REFLECT ACTUAL REVENUE

Sec. 18.13. Any unreserved credit balance in the Highway Fund on June 30 of each of the fiscal years of this biennium shall support appropriations in the succeeding fiscal year. If all of the balance is not needed for these appropriations, the Director of the Budget may use the remaining excess to establish a reserve for access and public roads, a reserve for unforeseen happening of a state of affairs requiring prompt action as provided by G.S. 136-44.1, and other required reserves. If all of the remaining excess is not used to establish these reserves, the remainder shall be allocated to the State-funded maintenance appropriations in the manner approved by the Board of Transportation. The Board of Transportation shall report monthly to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division about the use of the reserve for highway and maintenance.

Requested by: Representatives Barbee, Bowie, Senator Hoyle

DEPARTMENT OF TRANSPORTATION EXEMPTION FROM GENERAL STATUTES FOR EXPERIMENTAL PROJECT--CONGESTION MANAGEMENT

Sec. 18.14. The Department of Transportation may enter into a design-build-warrant contract to develop, with Federal Highway Administration participation under The 1991 Intermodal Surface Transportation Efficiency Act, Title VI, Part B, Sections 6051-6059, a "Congestion Avoidance and Reduction for Autos and Trucks (CARAT)" system of traffic management for the greater Charlotte-Mecklenburg urban areas. Notwithstanding any other provision of law, contractors, contractors' employees, and Department of Transportation employees involved in this project only do not have to be licensed by occupational licensing boards as "license" and "occupational licensing board" are defined in G.S. 93B-1; and for the purpose of entering into contracts, the Department of Transportation is exempted from the provisions of the following General Statutes: G.S. 136-28.1, 143-52, 143-53, 143-58, 143-128, and 143-129. These statutory exemptions are limited and available only to the extent necessary to comply with federal rules, regulations, and policies for completion of this project.

The Department of Transportation shall report quarterly to the Joint Legislative Transportation Oversight Committee on its efforts to enter into a design-build-warrant contract and to award and construct the project. The report shall include, but not be limited to, the number of types of firms bidding on the project, special qualifications of the firms bidding, and the effect statutory exemptions might have had on the award and construction of the project and the receipt of federal discretionary funding for the project.

Requested by: Representatives Barbee, Bowie, Senator Hoyle

BRANCH AGENT/DMV COST COMPARISON

Sec. 18.16. The Division of Motor Vehicles shall conduct a cost comparison study comparing the costs of services provided by contract branch agents with the cost of providing those services at the Division of Motor Vehicles offices in Raleigh and Charlotte. The study shall also include an analysis of the impact the planned vehicle registration computer system improvements will have on the cost, efficiency, and delivery of services to the public. The Division of Motor Vehicles shall report the results of the study to the Joint Legislative Transportation Oversight Committee by March 1, 1996.

Requested by: Senators Hoyle, Hartsell, Representatives Barbee, Bowie

STUDY OF DRIVERS LICENSE MEDICAL EVALUATION PROGRAM

Sec. 18.17. (a) There is established in the General Assembly a Commission to Study the Drivers License Medical Evaluation Program operated pursuant to G.S. 20-9. The Commission shall study:

(1) Whether the program should be modified or abolished;

(2) Whether the program should be transferred entirely to the Division of Motor Vehicles rather than involving reviews by the Commission for Health Services;

(3) How applicants for drivers licenses should be removed from the program when their conditions improve; and

(4) Whether or not the program addresses the special needs and abilities of senior citizens.

(b) The Commission shall be composed of six members appointed as follows:

(1) Three members appointed by the President Pro Tempore of the Senate, at least two of whom shall be members of the Senate at the time of their appointment; and

(2) Three members appointed by the Speaker of the House of Representatives, at least two of whom shall be members of the House of Representatives at the time of their appointment.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each select a legislative member from their appointments to serve as cochair of the Commission. Meetings shall be held at the call of the cochairs.

All members shall serve at the will of their appointing officer. Unless removed, or having resigned, members shall serve until the Commission has made its report. Vacancies in membership shall be filled by the officer making the original appointment.

(c) Upon approval of the Legislative Services Commission, the Legislative Administrative Officer shall assign appropriate professional and clerical staff from the Fiscal Research, Research, or Bill Drafting Divisions of the Legislative Services Office of the General Assembly to assist with the study. Clerical staff shall be furnished to the Commission through the Senate and House of Representatives Supervisors of Clerks. The employment of the clerical staff shall be borne by the Commission. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and department of the State to provide any information and any data within their possession and ascertainable from their records, and the power to subpoena witnesses.

The Commission may request the assistance of the Department of Environment, Health, and Natural Resources, the Department of Transportation, and the Office of State Budget and Management in conducting this study.

Members of the Commission shall receive per diem, subsistence, and travel allowances as provided by law.

The Commission may make an interim report, including any legislative proposals, to the 1995 General Assembly, Regular Session 1996, and shall make a final report, including any legislative proposals, to the 1997 General Assembly.

Requested by: Representatives Barbee, Bowie, Senator Hoyle

REVERSIONS FOR HIGHWAY FUND PROJECTS

Sec. 18.18. Except as permitted in other sections of this act, the appropriations for capital improvements from the Highway Fund made by the 1995 General Assembly may be expended only for the specific projects set out by the 1995 General Assembly and for no other purpose.

Construction of all capital improvement projects enumerated by the 1995 General Assembly shall be commenced, or self-liquidating indebtedness with respect to them shall be incurred, within 12 months following the first day of the fiscal year in which the funds are available.

If construction contracts on those projects have not been awarded or self-liquidating indebtedness has not been incurred within that period, the direct appropriation for those projects shall revert to the Highway Fund, and the self-liquidating appropriation shall lapse; except that direct appropriations may be placed in a reserve fund if so authorized in this act.

This deadline with respect to both direct and self-liquidating appropriations from the Highway Fund may be extended with the approval of the Director of the Budget up to an additional 12 months if circumstances and conditions warrant such extension.

Requested by: Representatives Barbee, Bowie, Senator Hoyle

CAPITAL REVERSIONS

Sec. 18.19. (a) The funds remaining unencumbered from the following projects shall revert to the Highway Fund:

DMV Additions	Sec. 4 of Chapter 1101 of the 1987 Session Laws.
DMV Additions	Sec. 6 of Chapter 754 of the 1989 Session Laws.
DMV Warehouse	Sec. 6 of Chapter 754 of the 1989 Session Laws.
Land, Asheville	Sec. 8 of Chapter 1074 of the 1989 Session Laws.
DMV Electrical	Sec. 236.1 of Chapter 689 of the 1991 Session Laws.
DMV Building	Sec. 5 of Chapter 561 of the 1993 Session Laws.

(b) From the funds reverted to the Highway Fund by subsection (a) of this section, sufficient funds shall be used to close the accounts on the following projects:

Handicap Modifications	Sec. 4 of Chapter 1101 of the 1987 Session Laws.
Statesville DMV	Sec. 236.1 of Chapter 689 of the 1991 Session Laws.
Handicap Modifications	Sec. 236.1 of Chapter 689 of the 1991 Session Laws.
Fire Alarm	Sec. 30 of Chapter 1044 of the 1991 Session Laws.
Goldsboro DMV	Sec. 30 of Chapter 1044 of the 1991 Session Laws.
Kinston DMV	Sec. 30 of Chapter 1044 of the 1991 Session Laws.

Requested by: Representatives Barbee, Bowie, Senator Hoyle
UNSPENT BEAUFORT REST AREA FUNDS TO REVERT TO HIGHWAY FUND

Sec. 18.20. Unused funds appropriated to the Department of Administration pursuant to Section 106 of Chapter 900 of the 1991 Session Laws shall revert to the Highway Fund.

Requested by: Representatives Barbee, Bowie, Senator Hoyle
LAND SALES PROCEEDS TO BE APPROPRIATED

Sec. 18.21. The proceeds from the sales of the following properties shall be placed in a capital reserve to be appropriated by the 1996 General Assembly for capital projects to be funded during the 1996-97 fiscal year:

Goldsboro - Old District Office/Maintenance Yard
Durham - Property at 320 Club Drive
Dare County - Old Bridge Maintenance Yard
Greenville - Maintenance Subyard
Cashiers - Storage Yard.

Requested by: Representatives Barbee, Bowie, Senator Hoyle
HIGHWAY FUND/HIGHWAY TRUST FUND FINANCIAL MODEL

Sec. 18.22. The Joint Legislative Transportation Oversight Committee shall prepare a request for proposal (RFP), select a qualified firm from bids submitted in response to the RFP to develop a Highway Fund/Highway Trust Fund financial model, and contract with that firm to develop the financial model by March 31, 1996, at a cost not to exceed sixty thousand dollars ($60,000). The funds to pay for the development of the financial model shall come from the Highway Trust Fund.

The financial model shall be a computer-based financial model used to project long-term expenditure and revenue trends under various simulations. The model will identify quantitatively the long-term "structural" implications of the interplay between the Highway Fund and the Highway Trust Fund budget, the economy, and selected demographic factors.

Requested by: Representatives Barbee, Bowie, Senator Hoyle
STATE PRINTING OFFICER TO STUDY STATE PRINTING SERVICES

Sec. 18.23. The State Printing Officer in the Division of Purchase and Contract, Department of Administration, shall study State government printing services to determine, inter alia:

(1) The feasibility of continuing separate departmental in-house printing operations;
(2) The feasibility of the increased use of Correction Enterprises printing services; and
(3) Whether contracting out printing orders worth more than ten thousand dollars ($10,000) would provide savings to the State.

The State Printing Officer shall submit a report on his findings to the Joint Legislative Commission on Governmental Operations on or before October 31, 1995.

Requested by: Representatives Barbee, Bowie, Senator Hoyle

FINANCIAL ACCOUNTING AND REPORTING FUNDS REVERTED

Sec. 18.24. Of the funds appropriated in fiscal year 1992-93 for the purpose of beginning the implementation of a new financial accounting and reporting system for the Department of Transportation, the sum of one million three hundred thousand dollars ($1,300,000) shall revert to the Highway Fund on June 30, 1995.

The remaining unencumbered and unspent funds shall be used by the Department of Transportation in a joint effort with the Office of the State Controller to develop a comprehensive plan for the new financial accounting and reporting system for presentation to the 1996 Session of the General Assembly.

The comprehensive plan shall provide for the complete financial accounting and reporting requirements of the Department including those for work order funding and costing, billing for Federal Highway Aid and other sums owed to the Department, payment to highway and engineering contractors, fleet management and inventory management as well as core accounting functions of purchasing, accounts payable, accounts receivable, budget preparation, budget control, fixed assets, and grant accounting.

For all the above functions, the comprehensive plan shall identify:

(1) The processing concepts and methods that will be employed;
(2) The computer hardware and software and associated manual processes required to perform the required functions efficiently and effectively;
(3) The implementation cost for the computer hardware and software and related costs such as training;
(4) The time required for implementation;
(5) The projected operating costs for the new system; and
(6) The projected operating savings, if any.

The planned system shall conform to the applicable standards and requirements of the State Accounting System.

The Department shall make quarterly reports on the development of the plan to the Joint Legislative Transportation Oversight Committee.

Requested by: Senators Hoyle, Hartsell, Representatives Barbee, Bowie

ALLOCATION OF FUNDS FOR DRIVER TRAINING

Sec. 18.27. In allocating funds for driver training, the State Board of Education shall consider the needs of small and low-wealth local school administrative units.

Requested by: Senators Hoyle, Hartsell, Representatives Barbee, Bowie

RADIO ISLAND RAILROAD TRESTLE FUNDS

Sec. 18.28. (a) Section 68 of Chapter 561 of the 1993 Session Laws reads as rewritten:

"Sec. 68. Of the funds appropriated in this act from the General Fund to the ~~North Carolina Ports Railway Commission,~~ the Department of Transportation, the sum of two hundred fifty thousand dollars ($250,000) for the 1993-94 fiscal year shall be used to plan for the replacement of the wooden trestle over the Newport River on the Beaufort and Morehead Railroad with a modern concrete trestle.

~~The Attorney General and the Department of Transportation shall identify legal issues related to the design, construction, and operation of the new trestle and shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office not later than March 1, 1994, on options available to resolve those issues.~~"

(b) The Department of Transportation shall proceed with the planning and construction of the trestle, Project P-3100 in the 1996-2002 Transportation Improvement Program, and shall commence construction of the trestle during calendar year 1996. The completed bridge shall be added to the State System for maintenance purposes.

Requested by: Senators Hoyle, Hartsell, Representatives Barbee, Bowie

CHARLOTTE MOTOR SPEEDWAY PEDESTRIAN BRIDGE

Sec. 18.29. The Department of Transportation may permit private encroachments on the highway right-of-way of U.S. 29 in Cabarrus County for pedestrian bridges and tunnels to provide access for pedestrians and vehicles from the Charlotte Motor Speedway property on the north side of U.S. 29 to the Charlotte Motor Speedway property located on the south side of U.S. 29. Locations, plans, and specifications for the pedestrian bridges and tunnels shall be approved by the Department.

The encroachments shall not unreasonably interfere with or obstruct the public use of U.S. 29 and shall be subject to all other rules, regulations, and conditions of the Department of Transportation for encroachments.

Requested by: Senators Hoyle, Hartsell, Representatives Barbee, Bowie

ROOFING REPAIR REVERSIONS

Sec. 18.30. Funds remaining unencumbered from the following roofing repair projects shall revert to the Highway Fund:

Roofing	Sec. 8 of Chapter 1074 of the 1989 Session Laws.
Roofing	Sec. 236.1 of Chapter 689 of the 1991 Session Laws.
Roofing	Sec. 30 of Chapter 1044 of the 1991 Session Laws.
Roofing	Sec. 5 of Chapter 561 of the 1993 Session Laws.

PART 19. DEPARTMENT OF CORRECTION

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Daughtry

AMEND CRIMINAL JUSTICE PARTNERSHIP ACT

Sec. 19. G.S. 143B-273.15 reads as rewritten:

"§ *143B-273.15. Funding formula.*

To determine the grant amount for which a county or counties may apply, the granting authority shall apply the following formula:

~~(a)~~ (1) Twenty percent (20%) of the total ~~fund~~ fiscal year appropriation plus any unspent or unclaimed funds in the

Account shall be distributed in the discretion of the Secretary to encourage innovative efforts to develop multicounty projects; to encourage cooperation and collaboration among existing services and avoid duplication of efforts; to provide for technical assistance to the counties in the development of county plans and in the evaluation of programs funded under this Article; to encourage the renovation of existing facilities; and to encourage innovative substance abuse programs.

~~(b)~~ (2) Of the remaining eighty percent (80%) of the ~~fund,~~ fiscal year appropriation, a total funding amount will be set for each county based upon the following variables:

~~(1)~~ a. Twenty percent (20%) based on a fixed equal dollar amount for each county;

~~(2)~~ b. Sixty percent (60%) based on the county share of the State population; and

~~(3)~~ c. Twenty percent (20%) based on the supervised probation admissions rate for the county.

The sum of the amounts in ~~subdivisions (1), (2), and (3)~~ sub-subdivisions a., b., and c. is the total amount of the funding that a county may apply for under this subsection.

Grants to participating counties are for a period of one fiscal year with unobligated funds being returned to the Account at the end of the grant period. Funds are provided to participating counties on a reimbursement basis unless a county documents a need for an advance of grant funds."

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Daughtry

LIMIT USE OF OPERATIONAL FUNDS

Sec. 19.1. Funds appropriated in this act to the Department of Correction for operational costs for additional facilities shall be used for personnel and operating expenses set forth in the budget approved by the General Assembly in this act. These funds may not be expended for any other purpose, except as provided for in this act, and may not be expended for additional prison personnel positions until the new facilities are within 90 days of projected completion, except for certain management, security, and support positions necessary to prepare the facility for opening, as authorized in the budget approved by the General Assembly.

Requested by: Representatives Justus, Thompson, Senator Ballance

REPORT ON SUMMIT HOUSE

Sec. 19.2. Summit House shall report quarterly during each year of the 1995-97 biennium to the Joint Legislative Commission on Governmental Operations on the (i) expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who have their probation revoked, and the number of clients who successfully complete the program while housed at Summit House; and (ii) the expansion of its program into Mecklenburg and Wake Counties.

Requested by: Senators Ballance, Odom, Rand, Representatives Justus, Thompson, Daughtry

SUMMIT HOUSE FUNDS SHALL NOT REVERT

Sec. 19.2A. (a) The balance of the nine hundred thousand dollars ($900,000) appropriated in Chapter 321 of the 1993 Session Laws to the Department of Correction for the 1994-95 fiscal year for support and expansion of the programs at Summit House in Greensboro and Mecklenburg and Wake Counties shall not revert at the end of the fiscal year but shall remain in the Department for that purpose.

(b) This section becomes effective June 30, 1995.

Requested by: Representatives Justus, Thompson, Senator Ballance

REPORT ON BOOT CAMPS

Sec. 19.3. Subsection (c) of Section 19 of Chapter 24 of the Session Laws of the 1994 Extra Session reads as rewritten:

"(c) The Department of Correction shall evaluate the IMPACT program and the post-Boot Camp probation program funded under this section and report by January 1 of each year to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections Oversight Committee, and the Fiscal Research ~~Division prior to January 1, 1995, and annually thereafter.~~ Division. The evaluation of the IMPACT program and the post-Boot Camp probation program shall ~~compare~~ include a comparison of that program's effectiveness, cost, and recidivism rate to other corrections programs for offenders ~~aged 16-25,~~ in the same age group and similar offense classes as that covered by the IMPACT program. ~~The evaluation of the post-Boot Camp probation program shall compare that program's effectiveness, cost, and recidivism rate to other probation programs for offenders aged 16-25.~~"

Requested by: Representatives Justus, Thompson, Daughtry, Senators Ballance, Rand

YOUTH COMMAND AUDIT

Sec. 19.5. The Office of State Auditor shall conduct a financial audit and a performance audit of the Youth Command of the Division of Prisons, Department of Correction, and shall report its findings to the Joint Legislative Corrections Oversight Committee by May 1, 1996.

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Daughtry

HARRIET'S HOUSE FUNDS SHALL NOT REVERT

Sec. 19.6. (a) The balance of the two hundred thousand dollars ($200,000) appropriated in Chapter 769 of the 1993 Session Laws to the Department of Correction for the 1994-95 fiscal year to support the programs at Harriet's House shall not revert at the end of the fiscal year but shall remain in the Department to be used for program operating costs, the purchase of equipment, and the rental of real property.

(b) This section becomes effective June 30, 1995.

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Daughtry

SUBSTANCE ABUSE FUNDS SHALL NOT REVERT

Sec. 19.8. (a) The balance of the one hundred thousand dollars ($100,000) appropriated in Chapter 591 of the 1993 Session Laws to the Department of Correction for the 1994-95 fiscal year for a pilot community-based treatment program for alcohol and drug abusers on probation and parole shall not revert at the end of the fiscal year but shall remain in the Department for that purpose.

(b) This section becomes effective June 30, 1995.

Requested by: Senators Rand, Ballance, Representatives Justus, Thompson, Daughtry

REPEAL PRISON CAP/PREVENT PAROLE OF VIOLENT FELONS

Sec. 19.9. (a) G.S. 148-4.1 is amended by adding a new subsection to read:

"(a1) Notwithstanding any other provision of this section, the Department of Correction shall at all times secure the necessary prison space to house any violent felon or habitual felon for the full active sentence imposed by the court. For purposes of this subsection, the term 'violent felon' means any person convicted of the following felony offenses: first or second degree murder, voluntary manslaughter, first or second degree rape, first or second degree sexual offense, any sexual offense involving a minor, robbery, kidnapping, or assault, or attempting, soliciting, or conspiring to commit any of those offenses."

(b) G.S. 148-4.1(c1) reads as rewritten:

"(c1) For purposes of this section only, 'prison capacity' means the number of prisoners housed in facilities located in North Carolina and owned or operated by the State of North Carolina, as set by the Governor. In setting the prison capacity for purposes of this section, the Governor shall consider the number of beds available and shall make a finding that the number set would not jeopardize the State's ability to perform its obligations under the law. In no event shall the number set by the Governor under this subsection exceed ~~24,500.~~ 27,500."

(c) G.S. 148-4.1(g) reads as rewritten:

"(g) In order to meet the requirements of this section, the Parole Commission shall not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or under ~~G.S. 14-17,~~ G.S. 14-17, or any other violent felon as defined in subsection (a1) of this section. The Parole Commission may continue to consider the suitability for release of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter 15A."

(d) G.S. 148-4.1(g1) reads as rewritten:

"(g1) Notwithstanding any other provision of law except for subsection (h) of this section, ~~whenever the Post-Release Supervision and Parole Commission is required to release inmates in order to meet the requirements of this section,~~ the Post-Release Supervision and Parole Commission may parole nonviolent inmates who would not otherwise be eligible for parole

instead of paroling violent inmates who are eligible for parole. This subsection does not apply to sentences under Article 81B of Chapter 15A of the General Statutes."

(e) Effective January 1, 1996, G.S. 148-4.1, as rewritten by subsections (a) and (b) of this section, reads as rewritten:

"§ *148-4.1. Release of inmates.*

(a) Whenever the Secretary of Correction determines from data compiled by the Department of Correction that it is necessary to reduce the prison population to a more manageable ~~level,~~ level or to meet the State's obligations under law, he shall direct the Post-Release Supervision and Parole Commission to release on parole over a reasonable period of time a number of prisoners sufficient to that purpose. From the time the Secretary directs the Post-Release Supervision and Parole Commission until the prison population has been reduced to a more manageable level, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred. In order to meet the requirements of this section, the Parole Commission shall not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or under G.S. 14-17, or any other violent felon as defined in subsection (a1) of this section. The Parole Commission may continue to consider the suitability for release of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter 15A.

(a1) Notwithstanding any other provision of this section, the Department of Correction shall at all times secure the necessary prison space to house any violent felon or habitual felon for the full active sentence imposed by the court. For purposes of this subsection, the term 'violent felon' means any person convicted of the following felony offenses: first or second degree murder, voluntary manslaughter, first or second degree rape, first or second degree sexual offense, any sexual offense involving a minor, robbery, kidnapping, or assault, or attempting, soliciting, or conspiring to commit any of those offenses.

(b) Except as provided in subsection ~~(c) and (c),~~ (c), only inmates who are otherwise eligible for parole pursuant to Article 85 of Chapter 15A or pursuant to Article 3B of this Chapter may be released under this section.

(c) Persons eligible for parole under Article 85A of Chapter 15A shall be eligible for early parole under this section nine months prior to the discharge date otherwise applicable, and six months prior to the date of automatic 90-day parole authorized by G.S. 15A-1380.2.

~~(c1) For purposes of this section only, 'prison capacity' means the number of prisoners housed in facilities located in North Carolina and owned or operated by the State of North Carolina, as set by the Governor. In setting the prison capacity for purposes of this section, the Governor shall consider the number of beds available and shall make a finding that the number set would not jeopardize the State's ability to perform its obligations~~

~~under the law. In no event shall the number set by the Governor under this subsection exceed 27,500.~~

~~(d) If the number of prisoners housed in facilities located in North Carolina and owned or operated by the State of North Carolina for the Division of Prisons exceeds ninety-eight percent (98%) of prison capacity for 15 consecutive days, the Secretary of Correction shall notify the Governor and the Chairman of the Parole Commission of this fact. Upon receipt of this notification, the Parole Commission shall within 90 days release on parole a number of inmates sufficient to reduce the prison population to ninety-seven percent (97%) of prison capacity.~~

~~From the date of the notification until the prison population has been reduced to ninety-seven percent (97%) of prison capacity, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred.~~

~~(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the prison population has been reduced to ninety-seven percent (97%) of prison capacity, any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate termination upon admission, notwithstanding any other provision of law, except:~~

~~(1) Those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving, and~~

~~(2) Those persons convicted pursuant to G.S. 130A-25 of failing to obtain the treatment required by Part 3 or Part 5 of Article 6 of Chapter 130A or of violating G.S. 130A-144(f) or G.S. 130A-145.~~

~~(f) In complying with the mandate of subsection (d), the Parole Commission may exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to be paroled under this section so long as the prison population does not exceed prison capacity.~~

~~(g) In order to meet the requirements of this section, the Parole Commission shall not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or under G.S. 14-17, or any other violent felon as defined in subsection (a1) of this section. The Parole Commission may continue to consider the suitability for release of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter 15A.~~

(g1) Notwithstanding any other provision of law except for subsection (h) of this section, the Post-Release Supervision and Parole Commission may parole nonviolent inmates who would not otherwise be eligible for parole instead of paroling violent inmates who are eligible for parole. This subsection does not apply to sentences under Article 81B of Chapter 15A of the General Statutes.

(h) A person sentenced under Article 81B of Chapter 15A of the General Statutes shall not be released pursuant to this section."

(f) Effective January 1, 1996, G.S. 148-32.1(b) reads as rewritten:

"(b) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which said local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the district court district as defined in G.S. 7A-133 where the facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility is located may order that the prisoner be transferred to any other qualified local confinement facility within that district or within another such district where space is available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanant, which local facility shall accept the transferred prisoner, if the prison population has exceeded ~~the limits established in G.S. 148-4.1(d),~~ a manageable level as provided for in G.S. 148-4.1(a). If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 90 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility."

(g) Subsections (e) and (f) of this section become effective January 1, 1996. The remainder of this section is effective upon ratification.

Requested by: Representatives Justus, Thompson, Daughtry, Senators Ballance, Rand

CONTRACTS FOR HOUSING STATE PRISONERS IN LOCAL CONFINEMENT FACILITIES/ALLOW CONTRACTS FOR PRIVATE PRISONS/REMOVE SUNSET ON OUT-OF-STATE HOUSING/REMOVE LIMIT ON PRISONERS IN NON-STATE-OWNED FACILITIES

Sec. 19.10. (a) G.S. 148-37 reads as rewritten:

"§ *148-37. Additional facilities authorized; contractual arrangements.*

(a) Subject to the provisions of G.S. 143-341, the State Department of Correction may establish additional facilities for use by the Department, such facilities to be either of a permanent type of construction or of a temporary or movable type as the Department may find most advantageous to the particular needs, to the end that the prisoners under its supervision may be so distributed throughout the State as to facilitate individualization of treatment designed to prepare them for lawful living in the community where they are most likely to reside after their release from prison. For this purpose, the Department may purchase or lease sites and suitable lands adjacent thereto and erect necessary buildings thereon, or purchase or lease existing facilities, all within the limits of allotments as approved by the Department of Administration.

(b) The Secretary of Correction may contract with the proper official of the United States or of any county or city of this State for the confinement of federal prisoners after they have been sentenced, county, or city prisoners in facilities of the State prison system or for the confinement of State prisoners in any county or any city facility located in North Carolina, or any facility of the United States Bureau of Prisons, when to do so would most economically and effectively promote the purposes served by the Department of Correction. ~~Any~~ Except as otherwise provided, any contract made under the authority of this ~~section~~ subsection shall be for a period of not more than two years, and shall be renewable from time to time for a period not to exceed two years. Contracts made under the authority of this subsection for the confinement of State prisoners in local or district confinement facilities may be for a period of not more than 10 years and renewable from time to time for a period not to exceed 10 years, and shall be subject to the approval of the Council of State and the Department of Administration after consultation with the Joint Legislative Commission on Governmental Operations. Contracts for receiving federal, county and city prisoners shall provide for reimbursing the State in full for all costs involved. The financial provisions shall have the approval of the Department of Administration before the contract is executed. Payments received under such contracts shall be deposited in the State treasury for the use of the State Department of Correction. Such payments are hereby appropriated to the State Department of Correction as a supplementary fund to compensate for the additional care and maintenance of such prisoners as are received under such contracts.

(c) In addition to the authority contained in subsections (a) and (b) of this section, and in addition to the contracts ratified by subsection (f) of this section, the Secretary of Correction may enter into contracts with any public entity or any private nonprofit or for-profit firms for the confinement and care of State prisoners in any out-of-state ~~public~~ correctional facility when to do so would most economically and effectively promote the purposes served by the Department of Correction. Contracts entered into under the authority of this subsection shall be for a period not to exceed two years and shall be renewable from time to time for a period not to exceed two years. ~~Subject to the provisions of subsection (e) of this section, the combined authority contained in this subsection and in subsection (f) of this section may be used to house a maximum of 1,000 prisoners at any one time, which maximum shall include those housed on March 25, 1994, under contracts ratified by subsection (f) of this section.~~ Prisoners may be sent to out-of-state correctional facilities only when there are no available facilities in this State within the State prison system to appropriately house those prisoners. Any contract made under the authority of this subsection ~~shall expire not later than June 30, 1995, and~~ shall be approved by the Department of Administration before the contract is executed. Before expending more than the amount specifically appropriated by the General Assembly for the out-of-state housing of inmates, the Department shall obtain the approval of the Joint Legislative Commission on Governmental Operations and shall report such expenditures to the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Appropriations

Subcommittees on Justice and Public Safety, and the Chairs of the Joint Legislative Corrections Oversight Committee.

(d) Prisoners confined in out-of-state correctional facilities pursuant to subsection (c) of this section shall remain subject to the rules adopted for the conduct of persons committed to the State prison system. The rules regarding good time and gain time, discipline, classification, extension of the limits of confinement, transfers, housing arrangements, and eligibility for parole shall apply to inmates housed in those out-of-state correctional facilities. The operators of those out-of-state correctional facilities may promulgate any other rules as may be necessary for the operation of those facilities with the written approval of the Secretary of Correction. Custodial officials employed by an out-of-state correctional facility are agents of the Secretary of Correction and may use those procedures for use of force authorized by the Secretary of Correction not inconsistent with the laws of the State of situs of the facility to defend themselves, to enforce the observance of discipline in compliance with correctional facility rules, to secure the person of a prisoner, and to prevent escape. Prisoners confined to out-of-state correctional facilities may be required to perform reasonable work assignments within those facilities. Private firms under subsection (c) of this section shall employ inmate disciplinary and grievance policies of the North Carolina Department of Correction.

~~(e) The Department of Correction shall not contract to house in non-State-owned facilities within the State more than a total of 1,500 inmates at any one time, excluding any beds in private substance abuse treatment centers authorized by the General Assembly. If the number of inmates housed in non-State-owned facilities pursuant to this section exceeds 500, then the maximum number of prisoners authorized to be housed out-of-state pursuant to subsection (c) of this section is reduced by the amount of the excess.~~

(f) Any contracts entered into by the Department of Correction with public contractors prior to March 25, 1994, for the out-of-state housing of inmates are ratified. ~~The Department of Correction shall take such actions not inconsistent with the terms of the contracts so that without further approval by the General Assembly they are not effective for the confinement or care of State prisoners after June 30, 1995.~~

(g) The Secretary of Correction may contract with private for-profit or nonprofit firms for the provision and operation of confinement facilities totaling up to 1,000 beds in the State to house State prisoners when to do so would most economically and effectively promote the purposes served by the Department of Correction. Contracts entered under the authority of this subsection shall be for a period not to exceed 10 years, shall be renewable from time to time for a period not to exceed 10 years, and are subject to the approval of the Council of State and the Department of Administration, after consultation with the Joint Legislative Commission on Governmental Operations. The Secretary of Correction shall enter contracts under this subsection only if funds are appropriated for this purpose by the General Assembly.

Contracts made under the authority of this subsection may provide the State with an option to purchase the confinement facility or may provide for

the purchase of the confinement facility by the State. The Department of Correction may give preference to facilities intended for joint county and State use where such facilities are developed by public/private partnerships and financed by tax-exempt bond issues, and where such facilities offer general terms and conditions favorable to the State in the competitive bidding process pursuant to Article 8 of Chapter 143 of the General Statutes. All contracts for the housing of State prisoners in private confinement facilities shall require a minimum of ten million dollars ($10,000,000) of occurrence-based liability insurance and shall hold the State harmless and provide reimbursement for all liability arising out of actions caused by operations and employees of the private confinement facility.

Prisoners housed in private confinement facilities pursuant to this subsection shall remain subject to the rules adopted for the conduct of persons committed to the State prison system. The Secretary of Correction may review and approve the design and construction of private confinement facilities before housing State prisoners in these facilities. The rules regarding good time, gain time, and earned credits, discipline, classification, extension of the limits of confinement, transfers, housing arrangements, and eligibility for parole shall apply to inmates housed in private confinement facilities pursuant to this subsection. The operators of private confinement facilities may adopt any other rules as may be necessary for the operation of those facilities with the written approval of the Secretary of Correction. Custodial officials employed by a private confinement facility are agents of the Secretary of Correction and may use those procedures for use of force authorized by the Secretary of Correction to defend themselves, to enforce the observance of discipline in compliance with confinement facility rules, to secure the person of a prisoner, and to prevent escape. Private firms under this subsection shall employ inmate disciplinary and grievance policies of the North Carolina Department of Correction.

(h) Private confinement facilities under this section shall be designed, built, and operated in accordance with applicable State laws, court orders, fire safety codes, and local regulations.

(i) The Department of Correction shall make a written report no later than March 1 of every odd-numbered year, beginning in 1997, on the substance of all outstanding contracts for the housing of State prisoners entered into under the authority of this section. The report shall be submitted to the Council of State, the Department of Administration, the Joint Legislative Commission on Governmental Operations, and the Joint Legislative Corrections Oversight Committee. In addition to the report, the Department of Correction shall provide information on contracts for the housing of State prisoners as requested by these groups."

(b) Section 16(c) of Chapter 24 of the Session Laws of the 1994 Extra Session reads as rewritten:

"(c) Subsections (a) and (b) of this section are effective upon ~~ratification, but subsection (a) of this section expires on June 30, 1995.~~ ratification."

(c) When contracting with private for-profit or nonprofit firms for the housing of State prisoners, the Department of Correction may give preference to contracts for facilities to be located in the State when to do so would most efficiently house those prisoners.

(d) This section becomes effective June 30, 1995.

PART 20. DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Requested by: Representatives Justus, Thompson, Senator Ballance

LEGISLATIVE REVIEW OF DRUG LAW ENFORCEMENT AND OTHER GRANTS

Sec. 20. (a) Section 1303(4) of the Omnibus Crime Control and Safe Streets Act of 1968 provides that State applications for drug law enforcement grants are subject to review by the State legislature or its designated body.

(b) The North Carolina General Assembly hereby provides that State applications for grants under the State and Local Law Enforcement Assistance Act of 1986, Part M of the Omnibus Crime Control and Safe Streets Act of 1968 as enacted by Subtitle K of P.L. 99-570, the Anti-Drug Abuse Act of 1986, are subject to review by the Joint Legislative Commission on Governmental Operations if at the time of review the General Assembly is not in session. Any State agency submitting a grant application for review shall also report to the House Appropriations Subcommittee on Justice and Public Safety and to the Senate Appropriations Subcommittee on Justice and Public Safety with regard to the grant.

(c) Unless a State statute provides a different forum for review, when a federal law or regulation provides that a State application for a grant must be reviewed by the State legislature or its designated body and at the time of the review the General Assembly is not in session, that application shall be reviewed by the Joint Legislative Commission on Governmental Operations. Any State agency submitting a grant application for review shall also report to the House Appropriations Subcommittee on Justice and Public Safety and to the Senate Appropriations Committee on Justice and Public Safety with regard to the grant.

Requested by: Representatives Justus, Thompson, Daughtry, Senators Ballance, Rand

VICTIMS ASSISTANCE NETWORK FUNDS

Sec. 20.1. (a) Of the funds appropriated in this act to the Department of Crime Control and Public Safety, the sum of one hundred fifty thousand dollars ($150,000) for the 1995-96 fiscal year and the sum of one hundred fifty thousand dollars ($150,000) for the 1996-97 fiscal year shall be used to support the Victims Assistance Network. These funds shall be used by the Victims Assistance Network to perform the following functions under the direction of and as required by the Department of Crime Control and Public Safety:

(1) Conduct surveys and gather data on crime victims and their needs;
(2) Act as a clearinghouse for crime victims services;
(3) Provide an automated crime victims bulletin board for subscribers;
(4) Coordinate and support the activities of other crime victims advocacy groups;

(5) Identify training needs of crime victims services providers and criminal justice personnel and coordinate training efforts for those persons; and

(6) Provide other services as identified by the Governor's Crime Commission or the Department of Crime Control and Public Safety.

(b) This section becomes effective July 1, 1995.

Requested by: Representatives Justus, Thompson, Daughtry, Senators Ballance, Rand

REPORT ON COMMUNITY SERVICE WORKERS

Sec. 20.2. The Department of Crime Control and Public Safety shall report quarterly in the 1995-96 fiscal year and the 1996-97 fiscal year to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the number of community service workers who were available during each month of the time period preceding that report to perform repairs and maintenance of the parks and when and where they were available.

Requested by: Representatives Justus, Thompson, Daughtry, Senators Ballance, Rand

REPORT ON CRIME VICTIMS COMPENSATION FUND

Sec. 20.3. The Department of Crime Control and Public Safety shall report annually to the Senate and House Appropriations Base Budget Committees on Justice and Public Safety and the Fiscal Research Division on the administrative expenditures of the North Carolina Crime Victims Compensation Fund.

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Daughtry

STUDY DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Sec. 20.4. (a) There is established a Study Commission on the Department of Crime Control and Public Safety to be composed of 12 members: the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety, one member to be appointed by the Speaker of the House of Representatives, and two members to be appointed by the President Pro Tempore of the Senate. The members shall serve until the termination of the Commission. The Speaker of the House and the President Pro Tempore of the Senate shall each designate a cochair from the members from their respective houses. Either cochair may call the first meeting of the Commission. Vacancies shall be filled in the same manner as the original appointments were made.

(b) The Commission shall review the efficiency and effectiveness of the Department of Crime Control and Public Safety and determine whether the Department should be reorganized or any of its divisions eliminated or transferred. The Commission shall also consider whether other law enforcement agencies in the State should be transferred to the Department.

The Commission shall determine the potential cost savings of any recommended reorganizations or transfers.

(c) With the prior approval of the Legislative Services Commission, the Legislative Administrative Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the Offices of the House and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. With the prior approval of the Legislative Services Commission, the Commission may hold its meetings in the State Legislative Building or the Legislative Office Building.

(d) The Study Commission shall submit a final written report of its findings and recommendations to the General Assembly by May 1, 1996. All reports shall be filed with the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Upon filing its final report, the Commission shall terminate.

(e) Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

(1) Commission members who are also members of the General Assembly, at the rate established in G.S. 120-3.1.

(2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6.

(3) All other Commission members at the rate established in G.S. 138-5.

(f) There is allocated from the funds appropriated to the Legislative Services Commission's studies reserve to the Study Commission on the Department of Crime Control and Public Safety the sum of fifty thousand dollars ($50,000) for the 1995-96 fiscal year to conduct the study directed by this section.

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Daughtry

STUDY TRANSFER OF BUTNER PUBLIC SAFETY

Sec. 20.5. (a) There is established a Study Commission on the Transfer of Butner Public Safety to be composed of 12 members: six members to be appointed by the Speaker of the House of Representatives and six members to be appointed by the President Pro Tempore of the Senate. The appointees shall serve until the termination of the Commission. The Speaker of the House and the President Pro Tempore of the Senate shall each designate a cochair from their appointees. Either cochair may call the first meeting of the Commission. Vacancies shall be filled in the same manner as the original appointments were made.

(b) The Commission shall:

(1) Examine the potential for transferring the functions and responsibilities of Butner Public Safety from the Department of Crime Control and Public Safety to other State or local entities, including the sale or transfer of equipment, State buildings, or property currently occupied by Butner Public Safety;

(2) Determine the most appropriate means of meeting the service needs of both the State institutions and the local residents that would be affected by such a transfer, including the feasibility of incorporating Butner; and

(3) Determine the most cost-effective means of accomplishing such a transfer.

(c) With the prior approval of the Legislative Services Commission, the Legislative Administrative Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the Offices of the House and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. With the prior approval of the Legislative Services Commission, the Commission may hold its meetings in the State Legislative Building or the Legislative Office Building.

(d) The Study Commission shall submit a final written report of its findings and recommendations to the General Assembly by May 1, 1996. All reports shall be filed with the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Upon filing its final report, the Commission shall terminate.

(e) Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

(1) Commission members who are also members of the General Assembly, at the rate established in G.S. 120-3.1.

(2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6.

(3) All other Commission members at the rate established in G.S. 138-5.

(f) There is allocated from the funds appropriated to the Legislative Services Commission's studies reserve to the Study Commission on the Transfer of Butner Public Safety the sum of twenty-five thousand dollars ($25,000) for the 1995-96 fiscal year to conduct the study directed by this section.

PART 21. JUDICIAL DEPARTMENT

Requested by: Representatives Justus, Thompson, Senator Ballance

JUDICIAL DEPARTMENT REDUCTIONS

Sec. 21. In addition to specific position reductions provided for in this act, the Director of the Administrative Office of the Courts shall reduce the salary and wage line item for the Judicial Department by four hundred thousand dollars ($400,000) for each year of the 1995-97 biennium by either eliminating positions, using salary reserve funds, or both.

Requested by: Representatives Justus, Thompson, Senator Ballance

JURY FEE WAIVER PROGRAM

Sec. 21.1. (a) G.S. 7A-312 reads as rewritten:

"*§ 7A-312. Uniform fees for jurors; meals.*

A juror in the General Court of Justice including a petit juror, or a coroner's juror, but excluding a grand juror, shall receive twelve dollars ($12.00) per day, except that if any person serves as a juror for more than five days in any 24-month period, the juror shall receive thirty dollars ($30.00) per day for each day of service in excess of five days. A grand juror shall receive twelve dollars ($12.00) per day. However, any juror may waive payment of the per diem fees provided for in this section. A juror required to remain overnight at the site of the trial shall be furnished adequate accommodations and subsistence. If required by the presiding judge to remain in a body during the trial of a case, meals shall be furnished the jurors during the period of sequestration. Jurors from out of the county summoned to sit on a special venire shall receive mileage at the same rate as State employees."

(b) The Administrative Office of the Courts shall conduct a program to determine the extent to which cost savings may be generated by allowing jurors to waive payment of the per diem jury fees pursuant to subsection (a) of this section. The Administrative Office of the Courts shall report its findings on savings generated by this program to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by March 1, 1997.

(c) Subsection (a) of this section expires June 30, 1997.

Requested by: Representatives Justus, Thompson, Senator Ballance

TRANSFER OF EQUIPMENT AND SUPPLY FUNDS

Sec. 21.3. Funds appropriated to the Judicial Department in the 1995-97 biennium for equipment and supplies shall be certified in a reserve account. The Administrative Office of the Courts shall have the authority to transfer these funds to the appropriate programs and between programs as the equipment priorities and supply consumptions occur during the operating year. These funds may not be expended for any other purpose. The Administrative Office of the Courts shall make quarterly reports on transfers made pursuant to this section to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety.

Requested by: Representatives Justus, Thompson, Senator Ballance

REPORT ON DISPUTE SETTLEMENT CENTERS

Sec. 21.5. (a) All local dispute settlement centers currently receiving State funds shall report annually to the Judicial Department on the program's funding and activities, including:

(1) Types of dispute settlement services provided;
(2) Clients receiving each type of dispute settlement service;
(3) Number and type of referrals received, cases actually mediated, cases resolved in mediation, and total clients served in the cases mediated;
(4) Total program funding and funding sources;
(5) Itemization of the use of funds, including operating expenses and personnel;

(6) Itemization of the use of State funds;
(7) Level of volunteer activity; and
(8) Identification of future service demands and budget requirements.

The Judicial Department shall compile and summarize the information provided pursuant to this subsection and shall provide the information to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by February 1 of each year.

(b) Each local dispute settlement center requesting State funds for the first time shall provide the General Assembly with (i) the information enumerated in subsection (a) of this section, or projections where historical data is not available, as well as a detailed statement justifying the need for State funding, and (ii) certification that at least fifty percent (50%) of total funding for the first fiscal year in which funding is requested shall come from non-State sources, and (iii) if funding is requested for a second fiscal year, certification that at least sixty percent (60%) of total funding for the second fiscal year shall come from non-State sources.

(c) Each local dispute settlement center requesting an expansion of State funding shall provide the General Assembly with (i) the information enumerated in subsection (a) of this section, or projections where historical data is not available, as well as a detailed statement justifying the need for the expansion of State funding, and (ii) certification that at least sixty percent (60%) of total funding shall come from non-State sources.

Requested by: Representatives Justus, Thompson, Senator Ballance

SPECIAL CAPITAL CASE REHEARING FUND

Sec. 21.8. There is continued in the Judicial Department the nonreverting special fund known as "The Special Capital Case Rehearing Fund". The funds shall be used to provide for resentencing hearings, related appeals, and postconviction hearings required by the decisions of the United States Supreme Court in McKoy v. North Carolina, decided March 5, 1990, and of the Supreme Court of North Carolina upon remand of that case, including the payment of attorneys' fees and related expenses for representation of indigent persons as specified in Subchapter IX of Chapter 7A of the General Statutes. As determined by the Director of the Administrative Office of the Courts, any amounts in this fund not required to meet the needs of special capital case rehearings may be transferred to the Indigent Persons' Attorney Fee Fund.

Requested by: Representatives Justus, Thompson, Daughtry, Senators Ballance, Rand

COMMUNITY PENALTIES PROGRAM

Sec. 21.9. (a) Of the funds appropriated from the General Fund to the Judicial Department for the 1995-97 biennium to conduct the Community Penalties program, the sum of three million four hundred eighty-four thousand nine hundred twelve dollars ($3,484,912) for the 1995-96 fiscal year and the sum of four million one hundred thirty-four thousand nine hundred twelve dollars ($4,134,912) for the 1996-97 fiscal year may be allocated by the Judicial Department in each year of the biennium in any

amount among existing community penalties programs, including any State-operated programs, or may be used to establish new State-operated community penalties programs.

(b) The Judicial Department shall report annually to the Senate and House Appropriations Subcommittees on Justice and Public Safety and to the Fiscal Research Division on the administrative expenditures of the community penalties programs. The Judicial Department shall report quarterly to the Joint Legislative Commission on Governmental Operations on any elimination or reduction of funding for community penalties programs funded in the 1994-95 fiscal year or any program receiving initial funding during the 1995-97 biennium.

(c) G.S. 7A-771(1) reads as rewritten:

"(1) 'Community penalties program' means an agency or State-run office within the judicial district which shall (i) prepare community penalty plans; (ii) arrange or contract with public and private agencies for necessary services for offenders; and (iii) monitor the progress of offenders placed on community penalty plans."

(d) G.S. 7A-772 reads as rewritten:

"§ 7A-772. *Allocation of funds.*

(a) The Director may award grants in accordance with the policies established by this Article and in accordance with any laws made for that purpose, including appropriations acts and provisions in appropriations acts, and adopt regulations for the implementation, operation, and monitoring of community penalties programs. Community penalties programs that are grantees shall use such funds to develop, implement, and monitor community penalty plans. Grants shall be awarded by the Director to agencies whose comprehensive program plans promise best to meet the goals set forth herein.

(b) The Director may establish local community penalties programs and appoint those staff as the Director deems necessary. These personnel may serve as full-time or part-time State employees or may be hired on a contractual basis when determined appropriate by the director. Contracts entered under the authority of this subsection shall be exempt from the competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall adopt rules necessary and appropriate for the administration of the program. Funds appropriated by the General Assembly for the establishment and maintenance of community penalties programs under this Article shall be administered by the Administrative Office of the Courts."

(e) G.S. 7A-773 reads as rewritten:

"§ 7A-773. *Responsibilities of a community penalties program.*

A community penalties program shall be responsible for:

(1) Targeting offenders who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who face an imminent and substantial threat of imprisonment.

(2) Preparing detailed community penalty plans for presentation to the sentencing judge by the offender's ~~attorney.~~ attorney or at the request of the sentencing judge.

(3) Contracting or arranging with public or private agencies for services described in the community penalty plan.
(4) Monitoring the progress of offenders under community penalty plans."

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Daughtry

COURT REPORTING/USE OF AUDIO AND VIDEO EQUIPMENT

Sec. 21.10. (a) The Administrative Office of the Courts may use funds appropriated in this act for State court reporter positions and support, including contractual services, to purchase audio and video recording equipment for use in the courtroom, provided that the purchase is to implement budget reductions for court reporter programs as required in this act.

(b) The Office of the State Auditor shall study the court reporting system and determine the most cost-effective and appropriate use of official State court reporters, contractual reporters, and audio and video recording equipment for court reporting. The Office of the State Auditor shall consult with the Association of Official Court Reporters as part of the study. The study shall identify specific cost savings that would result from the implementation of the study recommendations. The Office of the State Auditor shall report to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the results of this study by April 1, 1996.

(c) Any reduction in official court reporter positions pursuant to this section shall be implemented notwithstanding the provisions of G.S. 7A-198(f) and G.S. 7A-95(e).

(d) The Administrative Office of the Courts shall make reasonable efforts to assist official State court reporters and district court reporters in obtaining employment within the court system.

Requested by: Representatives Justus, Thompson, Senator Ballance

FUNDING OF JUDGESHIPS

Sec. 21.11. The Judicial Department may use funds available to the Department to fund the district court judgeships authorized in Section 200.6 of Chapter 321 of the 1993 Session Laws for District Court Districts 3A, 8, 12, and 18 upon the assumption of office by the initial holders of those judgeships.

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Daughtry

GUARDIAN AD LITEM STUDY

Sec. 21.12. (a) The Legislative Research Commission may study the Guardian Ad Litem program in the Judicial Department and the Children's Services program in the Division of Social Services. The study shall:

(1) Identify the amount and source of funding for legal services and administration in child abuse and neglect and dependency cases in those programs;

(2) Identify the legal participants involved in child abuse and neglect and dependency court cases and each participant's responsibilities;
(3) Study the purpose and activities of each program and identify activities that are similar;
(4) Identify federal mandates and any federal funding that would be affected by any changes in legal services or administration of either program, and determine whether any federal funds are available to fund the Guardian Ad Litem program;
(5) Review guardian ad litem programs and children's services in other states, including cost-saving measures taken by those states, and identify other methods of administering and funding those programs;
(6) Identify methods of reducing the costs for attorneys involved in child abuse and neglect and dependency cases;
(7) Review administrative costs of each program and identify possible cost savings; and
(8) Determine the extent to which guardian ad litem attorneys are performing duties normally handled by volunteers and identify methods to reduce such practices.

(b) The Commission may report its findings to the 1996 Regular Session of the 1995 General Assembly.

Requested by: Representatives Justus, Thompson, Daughtry, Senators Ballance, Rand

CHANGE GUARDIAN AD LITEM APPOINTMENT

Sec. 21.13. G.S. 7A-586(a) reads as rewritten:

"(a) When in a petition a juvenile is alleged to be abused or neglected, the judge shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged to be dependent, the judge may appoint a guardian ad litem to represent the juvenile. The guardian ad litem and attorney advocate have standing to represent the juvenile in all actions under this Subchapter where they have been appointed. The appointment shall be made pursuant to the program established by Article 39 of this Chapter unless representation is otherwise provided pursuant to G.S. 7A-491 or G.S. 7A-492. The appointment shall terminate at the end of two years. Upon motion of any party including the guardian ad litem, or upon the judge's own motion, the guardian ad litem may be reappointed upon a showing of good cause. In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the child's legal rights ~~within the proceeding.~~ through the dispositional phase of the proceedings, and after disposition when necessary to further the best interests of the child. The duties of the guardian ad litem program shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the judge at the dispositional hearing; and to protect and promote the best interest of the juvenile until formally relieved of the responsibility by the judge."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

N.C. STATE BAR FUNDS

Sec. 21.14. Of the funds appropriated in this act as a grant-in-aid to the North Carolina State Bar for the 1995-97 fiscal biennium, the North Carolina State Bar may in its discretion use up to the sum of two hundred fifty thousand dollars ($250,000) for the 1995-96 fiscal year and up to the sum of two hundred fifty thousand dollars ($250,000) for the 1996-97 fiscal year to further the criminal justice system.

PART 22. DEPARTMENT OF JUSTICE

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Daughtry

REVERSION OF CERTAIN INSURANCE SETTLEMENT PROCEEDS

Sec. 22. (a) Section 23.5 of Chapter 769 of the 1993 Session Laws, Regular Session 1994, is repealed.

(b) Any funds received by the Department of Justice in settlement of insurance claims arising from damage to the Blue Bell building at the North Carolina Justice Academy shall be expended by the Department for replacement of the building and for no other purpose. If any appropriation is made to the Department for replacement of the Blue Bell Building, then any funds received as insurance settlement proceeds shall revert to the General Fund.

(c) Subsection (a) of this section becomes effective June 30, 1995.

Requested by: Representatives Justus, Thompson, Senator Ballance

DEPARTMENT OF JUSTICE SALARY FUNDS

Sec. 22.1. Of the funds appropriated to the Department of Justice in this act, the sum of ninety-three thousand four hundred fifty-three dollars ($93,453) for the 1995-96 fiscal year and the sum of ninety-three thousand four hundred fifty-three dollars ($93,453) for the 1996-97 fiscal year may be used for one-time annual salary adjustments for attorneys who are determined to be eligible for the adjustments based upon outstanding job performance for the preceding year.

Requested by: Representatives Justus, Thompson, Senator Ballance

SBI FUNDS/SPENDING PRIORITIES

Sec. 22.2. Of the funds appropriated in this act to the Department of Justice, State Bureau of Investigation, for the 1995-97 biennium for overtime payments, the first priority for use of the funds by the Department shall be:

(1) To make overtime payments to SBI agents in the Field Investigations Division; and

(2) To make overtime payments to supervisory personnel receiving overtime payments as of June 30, 1995, up to a maximum of five thousand two hundred dollars ($5,200) annually per individual.

Requested by: Representatives Justus, Thompson, Senator Ballance

SBI USE OF COURT-ORDERED REIMBURSEMENT FUNDS

Sec. 22.3. The State Bureau of Investigation (SBI) may use funds available from court-ordered reimbursement in undercover drug operations.

Requested by: Representatives Justus, Thompson, Senator Ballance

PRIVATE PROTECTIVE SERVICES AND ALARM SYSTEMS LICENSING BOARDS PAY FOR USE OF STATE FACILITIES AND SERVICES

Sec. 22.4. The Private Protective Services and Alarm Systems Licensing Boards shall pay the appropriate State agency for the use of physical facilities and services provided to those boards by the State.

Requested by: Representatives Justus, Thompson, Daughtry, Senators Ballance, Rand

LIMITS ON COMPUTER SYSTEM UPGRADE

Sec. 22.5. Any proposed increase in mainframe computer capacity or system upgrade for the Judicial Department, the Department of Correction, the Department of Justice, or the Department of Crime Control and Public Safety, to be funded from the Continuation Budget, shall be reported to the Joint Legislative Commission on Governmental Operations, to the Senate and House Chairs of the Appropriations Committees, and to the Chairs of the Justice and Public Safety Committees before the department enters into any contractual agreement. This report is to be made jointly by the Information Resource Management Commission, the Office of State Budget and Management, and the requesting department.

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Daughtry

CERTAIN LITIGATION EXPENSES TO BE PAID BY CLIENT AGENCIES

Sec. 22.6. Client departments, agencies, and boards shall reimburse the Department for reasonable court fees, attorney travel and subsistence costs, and other costs directly related to litigation in which the Department is representing that client department, agency, or board.

Requested by: Representatives Justus, Thompson, Daughtry, Senators Ballance, Rand

USE OF SEIZED AND FORFEITED PROPERTY TRANSFERRED TO STATE LAW ENFORCEMENT AGENCIES BY THE FEDERAL GOVERNMENT

Sec. 22.7. (a) Assets transferred to the Department of Justice during the 1995-97 biennium pursuant to 19 U.S.C. § 1616a shall be credited to the budget of that Department and shall result in an increase of law enforcement resources for the Department. Assets transferred to the Department of Crime Control and Public Safety during the 1995-97 biennium pursuant to 19 U.S.C. § 1616a shall be credited to the budget of that Department and shall result in an increase of law enforcement resources for the Department. The Departments shall report to the Joint Legislative Commission on Governmental Operations upon the receipt of these assets

and, before using these assets, shall report the intended use of these assets and the departmental priorities on which the assets may be expended.

The General Assembly finds that the use of these assets for new personnel positions, new projects, the acquisition of real property, repair of buildings where such repair includes structural change, and construction of or additions to buildings may result in additional expenses for the State in future fiscal periods; therefore, the Department of Justice and the Department of Crime Control and Public Safety are prohibited from using these assets for such purposes without the prior approval of the General Assembly, except during the 1995-97 biennium, the Department of Justice may:

(1) Use an amount not to exceed the sum of twenty-five thousand dollars ($25,000) of the funds to extend the lease of space in the Town of Salemburg for SBI training; and

(2) Use an amount not to exceed fifty thousand dollars ($50,000) of the funds to lease space for its technical operations unit, storage of its equipment and vehicles, and command post vehicle.

(b) Nothing in this section prevents North Carolina law enforcement agencies from receiving funds from the United States Department of Justice pursuant to 19 U.S.C. § 1616a.

PART 23. DEPARTMENT OF HUMAN RESOURCES

Requested by: Senators Martin of Guilford, Conder, Representatives Gardner, Hayes, Nye, Russell

REDUCE DHR FUNDS IN ANTICIPATION OF RECEIPT OF FEDERAL FUNDS

Sec. 23. Funds appropriated to the Department of Human Resources for the 1995-96 fiscal year have been reduced by fourteen million thirteen thousand three hundred ninety-six dollars ($14,013,396) in anticipation of the receipt of federal funds from the Title IV A - Emergency Assistance Program and the Social Services Block Grant. If these federal funds are not received or if only a portion of these funds are received, notwithstanding G.S. 143-15.3, the Director of the Budget may use funds available to the Department, not to exceed fourteen million thirteen thousand three hundred ninety-six dollars ($14,013,396). The Director of the Budget shall report to the Joint Legislative Commission on Governmental Operations prior to any such transfer.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

DHR EMPLOYEES/IN-KIND MATCH

Sec. 23.1. Notwithstanding the limitations of G.S. 143B-139.4, the Secretary of the Department of Human Resources may assign employees of the Office of Rural Health and Resource Development to serve as in-kind match to nonprofit corporations working to establish health care programs that will improve health care access while controlling costs.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

LIABILITY INSURANCE

Sec. 23.2. The Secretary of the Department of Human Resources, the Secretary of the Department of Environment, Health, and Natural Resources, and the Secretary of the Department of Correction may provide medical liability coverage not to exceed one million dollars ($1,000,000) on behalf of employees of the Departments licensed to practice medicine or dentistry and on behalf of physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Human Resources. This coverage may include commercial insurance or self-insurance and shall cover these individuals for their acts or omissions only while they are engaged in providing medical and dental services pursuant to their State employment or training.

The coverage provided under this section shall not cover any individual for any act or omission that the individual knows or reasonably should know constitutes a violation of the applicable criminal laws of any state or the United States, or that arises out of any sexual, fraudulent, criminal, or malicious act, or out of any act amounting to willful or wanton negligence.

The coverage provided pursuant to this section shall not require any additional appropriations and shall not apply to any individual providing contractual service to the Department of Human Resources, the Department of Environment, Health, and Natural Resources, or the Department of Correction, with the exception that coverage may include physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Human Resources.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

TRANSFERS OF CERTAIN FUNDS AUTHORIZED

Sec. 23.3. In order to assure maximum utilization of funds in county departments of social services, county or district health agencies, and area mental health, developmental disabilities, and substance abuse authorities, the Director of the Budget may transfer excess funds appropriated to a specific service, program, or fund, whether specified service in a block grant plan or General Fund appropriation, into another service, program, or fund for local services within the budget of the respective State agency.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

HEALTH CENTERS' PURCHASE OF MEDICATIONS

Sec. 23.4. Notwithstanding any provisions of law to the contrary, State rural health centers and federally funded community and migrant health centers shall be permitted to purchase medications by participating in contracts administered by the Department of Administration, Division of Purchase and Contract.

Requested by: Representatives Gardner, Hayes, Nye, Russell, Senators Martin of Guilford, Conder

DIVISION OF FAMILY DEVELOPMENT ABOLISHED

Sec. 23.5. The Division of Family Development of the Department of Human Resources is abolished. The Family Preservation Program is transferred to the Division of Social Services of the Department of Human Resources. The Family Support Program is transferred to the Division of

Child Development of the Department of Human Resources. The Office of Economic Opportunity is transferred to the Office of the Secretary of the Department of Human Resources.

All transfers required by this section shall include the transfer of all appropriations, budgets, and powers and duties.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

S.O.S. AND FAMILY RESOURCE CENTER GRANT PROGRAMS ADMINISTRATIVE COSTS LIMITS

Sec. 23.6. (a) Of the funds appropriated to the Department of Human Resources in this act, the Department may use up to a total of three hundred fifty thousand dollars ($350,000) each fiscal year of the biennium to administer the S.O.S. Program, to provide technical assistance to applicants and to local S.O.S. programs, and to evaluate the local S.O.S. programs. The Department may contract with appropriate public or nonprofit agencies to provide the technical assistance, including training and related services.

(b) Of the funds appropriated in this act to the Department of Human Resources for the Family Resource Center Grant Program, the Department may use up to three hundred thousand dollars ($300,000) each fiscal year of the biennium to administer the Program.

Requested by: Senators Martin of Guilford, Conder, Representatives Gardner, Hayes, Nye, Russell

COUNCIL ON DEVELOPMENTAL DISABILITIES SERVICES MAINTAINED

Sec. 23.6A. The Department of Human Resources is encouraged to maintain grants provided at the local level through the Council on Developmental Disabilities at the level funded in the 1994-95 fiscal year. Notwithstanding any law to the contrary, the Department may use funds available to it to maintain this minimum level of funding.

Requested by: Senators Martin of Guilford, Conder, Representatives Gardner, Hayes, Nye, Russell

DHR RESOURCE STUDIES

Sec. 23.6B. The Department shall study the following two issues and shall report these two issues, together with any recommendations, to the 1995 General Assembly, Regular Session 1996, within one week of convening:

(1) The average staff vacancy rate by division over the last five fiscal years, to determine its effect on lapsed salaries; and

(2) An analysis of unbudgeted revenues in excess of revenues in the certified budget as amended by the General Assembly received by the Department in the last two fiscal years, including:
   a. Indirect cost receipts; and
   b. Prior year earned revenue.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

DAY CARE FUNDS MATCHING REQUIREMENT

Sec. 23.7. No local matching funds may be required by the Department of Human Resources as a condition of any locality's receiving any State day care funds appropriated by this act unless federal law requires such a match.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
DAY CARE ALLOCATION FORMULA

Sec. 23.8. (a) To simplify current day care allocation methodology and more equitably distribute State day care funds, the Department of Human Resources shall apply the following allocation formula to all noncategorical federal and State day care funds used to pay the costs of necessary day care for minor children of needy families:

(1) One-third of budgeted funds shall be distributed according to the county's population in relation to the total population of the State;

(2) One-third of the budgeted funds shall be distributed according to the number of children under 6 years of age in a county who are living in families whose income is below the State poverty level in relation to the total number of children under 6 years of age in the State in families whose income is below the poverty level; and

(3) One-third of budgeted funds shall be distributed according to the number of working mothers with children under 6 years of age in a county in relation to the total number of working mothers with children under 6 years of age in the State.

(b) A county's initial allocation shall not be less than that county's initial allocation was in fiscal year 1990-91 under the formula prescribed by Section 102 of Chapter 500 of the 1989 Session Laws. However, if the total amount available to allocate is less than the amount allocated by formula in the 1990-91 fiscal year, a county's allocation may be less than the county's initial allocation was in that fiscal year.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
CHILD DAY CARE REVOLVING LOAN FUND

Sec. 23.9. Notwithstanding any law to the contrary, funds budgeted for the Child Day Care Revolving Loan Fund may be transferred to and invested by the financial institution contracted to operate the Fund. The principal and any income to the Fund may be used to make loans, reduce loan interest to borrowers, serve as collateral for borrowers, pay the contractor's cost of operating the Fund, or to pay the Department's cost of administering the program.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
DAY CARE

Sec. 23.10. Except for the allocation of support costs from federal grants by the General Assembly or the reallocation of federal grant funds by the Office of State Budget and Management, the Department of Human Resources shall distribute the funds appropriated and otherwise available to it for the purchase of day care for minor children of needy families so as to serve the greatest number of children possible.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

DAY CARE RATES

Sec. 23.11. (a) Rules for the monthly schedule of payments for the purchase of day care services for low-income children shall be established by the Social Services Commission pursuant to G.S. 143B-153(8)a., in accordance with the following requirements:

(1) For day care facilities, as defined in G.S. 110-86(3), in which fewer than fifty percent (50%) of the enrollees are subsidized by State or federal funds, the State shall continue to pay the same fee paid by private paying parents for a child in the same age group in the same facility.

(2) Facilities in which fifty percent (50%) or more of the enrollees are subsidized by State or federal funds may be paid the rate established by the local purchasing agency, not to exceed the county market rate.

(3) A market rate shall be calculated for each county and for each age group or age category of enrollees and shall be representative of fees charged to unsubsidized private paying parents for each age group of enrollees within the county. The county market rates shall be calculated from facility fee schedules collected by the Division of Child Development on a routine basis. The Division shall also calculate a statewide market rate for each age category. The Division may also calculate regional market rates for each age group and age category. The Social Services Commission shall adopt rules to establish minimum county rates that use the statewide market rates as a reference point.

(4) Child day care homes as defined in G.S. 110-86(4) and other home-based day care arrangements that are not required to be regulated by the State licensing agency may be paid the rate established by the local purchasing agency, not to exceed market rate for day care homes, which shall be calculated at least biennially by the Division of Child Development according to the method described in subdivision (3) of subsection (a) of this section.

(b) Facilities licensed pursuant to Article 7 of Chapter 110 of the General Statutes may participate in the program that provides for the purchase of care in day care facilities for minor children of needy families. No separate licensing requirements shall be used to select facilities to participate. In addition, day care facilities shall be required to meet any additional applicable requirements of federal law or regulations.

Day care homes as defined in G.S. 110-86(4) from which the State purchases day care services shall meet the standards established by the Child Day Care Commission pursuant to G.S. 110-101 and G.S. 110-105.1 and any additional requirements of State law or federal law or regulations. Child care arrangements exempt from State regulation pursuant to Article 7 of Chapter 110 of the General Statutes shall meet the requirements established by other State law and by the Social Services Commission.

County departments of social services or other local contracting agencies shall not use a provider's failure to comply with requirements in

addition to those specified in this subsection as a condition for reducing the provider's subsidized child day care rate.

(c) County departments of social services shall continue to negotiate with day care providers for day care services below those rates prescribed by subsection (a) of this section. County departments shall purchase day care services so as to serve the greatest number of children possible with existing resources.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES QUALITY ASSURANCE/ACCOUNTABILITY

Sec. 23.12. (a) The General Assembly finds, in consultation with the Governor, that it is essential to begin to develop comprehensive programs that provide high quality early childhood education and development services locally for children and their families. The General Assembly also finds that it is equally essential that these programs be developed in a manner that will provide both quality assurance and performance-based accountability to the children, their families, their communities, and the State.

(b) The Department of Human Resources shall develop and implement a performance-based evaluation system to evaluate the Early Childhood Education and Development Initiatives authorized by Part 10B of Article 3 of Chapter 143B of the General Statutes, if enacted. The Department shall design this system:

(1) To incorporate the elements of a formative evaluation, including process and efficiency studies, and of a summative evaluation, including outcome and effectiveness studies, in order to:
   a. Provide information to the Department and to the General Assembly on how to improve and refine the Programs;
   b. Enable the Department and the General Assembly to assess the overall quality and impact of the existing Programs and any future ones; and
   c. Enable the Department and the General Assembly to determine whether to make the Early Childhood Education and Development Initiatives statewide;

(2) To focus the Programs, as they develop and continue, on quality assurance, by making quality a central and ongoing priority and to ensure that quality improvement efforts address outcomes, such as functions and processes, rather than persons, specific details, or paperwork;

(3) To use reliable statistical methods to measure performance of processes, functions, efforts, and outcomes, which methods shall allow adequate tracking of children and families through the program and into the school system, in order to provide a real, objective measure of the outcome of the Programs; and

(4) To provide a detailed fiscal analysis of the use to which State funds for these Programs are put.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES PLAN

Sec. 23.13. Counties participating in the Early Childhood Education and Development Initiatives authorized by Part 10B of Article 3 of Chapter 143B of the General Statutes may use the county's allocation of State and federal child care funds to subsidize child care according to the county's Early Childhood Education and Development Initiatives Plan as approved by the Department of Human Resources. The use of federal funds shall be consistent with the appropriate federal regulations. Day care providers shall, at a minimum, comply with the applicable requirements for State licensure or registration pursuant to Article 7 of Chapter 110 of the General Statutes, with other applicable requirements of State law or rule, including rules adopted for nonregistered day care by the Social Services Commission, and with applicable federal regulations.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

MEDICAID

Sec. 23.14. (a) Funds appropriated in this act for services provided in accordance with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy and the medically needy. Funds appropriated for these services shall be expended in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection.

Services and payment bases:

(1) Hospital-Inpatient - Payment for hospital inpatient services will be prescribed in the State Plan as established by the Department of Human Resources. Administrative days for any period of hospitalization shall be limited to a maximum of three days.

(2) Hospital-Outpatient - Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Human Resources.

(3) Nursing Facilities - Payment for nursing facility services will be prescribed in the State Plan as established by the Department of Human Resources. Nursing facilities providing services to Medicaid recipients who also qualify for Medicare, must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program.

(4) Intermediate Care Facilities for the Mentally Retarded - As prescribed in the State Plan as established by the Department of Human Resources.

(5) Drugs - Drug costs as allowed by federal regulations plus a professional services fee per month excluding refills for the same drug or generic equivalent during the same month. Reimbursement shall be available for up to six prescriptions per recipient, per month, including refills. Payments for drugs are subject to the provisions of subsection (f) of this section and to the provisions at the end of subsection (a) of this section, or in accordance with the State Plan adopted by the Department of

Human Resources consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the Plan adopted by the Department of Human Resources, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents ($5.60) per prescription. Adjustments to the professional services fee shall be established by the General Assembly.

(6) Physicians, Chiropractors, Podiatrists, Optometrists, Dentists, Certified Nurse Midwife Services - Fee schedules as developed by the Department of Human Resources. Payments for dental services are subject to the provisions of subsection (g) of this section.

(7) Community Alternative Program, EPSDT Screens - Payment to be made in accordance with rate schedule developed by the Department of Human Resources.

(8) Home Health and Related Services, Private Duty Nursing, Clinic Services, Prepaid Health Plans, Durable Medical Equipment - Payment to be made according to reimbursement plans developed by the Department of Human Resources.

(9) Medicare Buy-In - Social Security Administration premium.

(10) Ambulance Services - Uniform fee schedules as developed by the Department of Human Resources.

(11) Hearing Aids - Actual cost plus a dispensing fee.

(12) Rural Health Clinic Services - Provider-based - reasonable cost; nonprovider based - single cost reimbursement rate per clinic visit.

(13) Family Planning - Negotiated rate for local health departments. For other providers - see specific services, for instance, hospitals, physicians.

(14) Independent Laboratory and X-Ray Services - Uniform fee schedules as developed by the Department of Human Resources.

(15) Optical Supplies - One hundred percent (100%) of reasonable wholesale cost of materials.

(16) Ambulatory Surgical Centers - Payment as prescribed in the reimbursement plan established by the Department of Human Resources.

(17) Medicare Crossover Claims - An amount up to the actual coinsurance or deductible or both, in accordance with the Plan, as approved by the Department of Human Resources.

(18) Physical Therapy and Speech Therapy - Services limited to EPSDT eligible children. Payments are to be made only to the Children's Special Health Services program at rates negotiated by the Department of Human Resources.

(19) Personal Care Services - Payment in accordance with Plan approved by the Department of Human Resources.

(20) Case Management Services - Reimbursement in accordance with the availability of funds to be transferred within the Department of Human Resources.

(21) Hospice - Services may be provided in accordance with Plan developed by the Department of Human Resources.

(22) Other Mental Health Services - Unless otherwise covered by this section, coverage is limited to agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, and reimbursement is made in accordance with a Plan developed by the Department of Human Resources not to exceed the upper limits established in federal regulations.

(23) Medically Necessary Prosthetics or Orthotics for EPSDT Eligible Children - Reimbursement in accordance with Plan approved by the Department of Human Resources.

(24) Health Insurance Premiums - Payments to be made in accordance with the Plan adopted by the Department of Human Resources consistent with federal regulations.

(25) Medical Care/Other Remedial Care - Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates. Services addressed by this paragraph are limited to those prescribed in the State Plan as established by the Department of Human Resources. Providers of these services must be certified as meeting program standards of the Department of Environment, Health, and Natural Resources.

(26) Pregnancy Related Services - Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.

Services and payment bases may be changed with the approval of the Director of the Budget.

Reimbursement is available for up to 24 visits per recipient per year to any one or combination of the following: physicians, clinics, hospital outpatient, optometrists, chiropractors, and podiatrists. Prenatal services, all EPSDT children, and emergency rooms are exempt from the visit limitations contained in this paragraph. Exceptions may be authorized by the Department of Human Resources where the life of the patient would be threatened without such additional care. Any person who is determined by the Department to be exempt from the 24-visit limitation may also be exempt from the six-prescription limitation.

(b) Allocation of Nonfederal Cost of Medicaid. The State shall pay eighty-five percent (85%); the county shall pay fifteen percent (15%) of the nonfederal costs of all applicable services listed in this section.

(c) Copayment for Medicaid Services. The Department of Human Resources may establish copayment up to the maximum permitted by federal law and regulation.

(d) Medicaid and Aid to Families With Dependent Children Income Eligibility Standards. The maximum net family annual income eligibility standards for Medicaid and Aid to Families with Dependent Children, and

the Standard of Need for Aid to Families with Dependent Children shall be as follows:

Categorically Needy		Medically Needy	
Family Size	Standard of Need	AFDC Payment Level*	AA, AB, AD*
1	$ 4,344	$ 2,172	$ 2,900
2	5,664	2,832	3,800
3	6,528	3,264	4,400
4	7,128	3,564	4,800
5	7,776	3,888	5,200
6	8,376	4,188	5,600
7	8,952	4,476	6,000
8	9,256	4,680	6,300

*Aid to Families With Dependent Children (AFDC); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).

The payment level for Aid to Families With Dependent Children shall be fifty percent (50%) of the standard of need.

These standards may be changed with the approval of the Director of the Budget with the advice of the Advisory Budget Commission.

(e) All Elderly, Blind, and Disabled Persons who receive Supplemental Security Income are eligible for Medicaid coverage.

(f) ICF and ICF/MR Work Incentive Allowances. The Department of Human Resources may provide an incentive allowance to Medicaid-eligible recipients of ICF and ICF/MR facilities who are regularly engaged in work activities as part of their developmental plan and for whom retention of additional income contributes to their achievement of independence. The State funds required to match the federal funds that are required by these allowances shall be provided from savings within the Medicaid budget or from other unbudgeted funds available to the Department. The incentive allowances may be as follows:

Monthly Net Wages	Monthly Incentive Allowance
$1.00 to $100.99	Up to $50.00
$101.00 - $200.99	$80.00
$201.00 to $300.99	$130.00
$301.00 and greater	$212.00.

(g) Dental Coverage Limits. Dental services shall be provided on a restricted basis in accordance with rules adopted by the Department to implement this subsection.

(h) Dispensing of Generic Drugs. Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, under the Medical Assistance Program (Title XIX of the Social Security Act) a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its

established or generic name, except when the prescriber personally indicates, either orally or in his own handwriting on the prescription order, "dispense as written" or words of similar meaning. Generic drugs, when available in the pharmacy, shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand name drugs, subject to the prescriber's "dispense as written" order as noted above.

As used in this subsection "brand name" means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and "established name" has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act as amended, 21 U.S.C. § 352(e)(3).

(i) Exceptions to Service Limitations, Eligibility Requirements, and Payments. Service limitations, eligibility requirements, and payments bases in this section may be waived by the Department of Human Resources, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans, managed care plans, or community-based services programs in accordance with plans approved by the United States Department of Health and Human Services, or when the Department determines that such a waiver will result in a reduction in the total Medicaid costs for the recipient.

(j) Volume Purchase Plans and Single Source Procurement. The Department of Human Resources, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies, and appliances by implementation of volume purchase plans, single source procurement, or other similar processes in order to improve cost containment.

(k) Cost Containment Programs. The Department of Human Resources, Division of Medical Assistance, may undertake cost containment programs including preadmissions to hospitals and prior approval for certain outpatient surgeries before they may be performed in an inpatient setting.

(l) For all Medicaid eligibility classifications for which the federal poverty level is used as an income limit for eligibility determination, the income limits will be updated each April 1 immediately following publication of federal poverty guidelines.

(m) The Department of Human Resources shall provide Medicaid to 19-, 20-, and 21-year olds in accordance with federal rules and regulations.

(n) The Department of Human Resources shall provide coverage to pregnant women and to children according to the following schedule:

(1) Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits;

(2) Infants under the age of 1 with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits;

(3) Children aged 1 through 5 with family incomes equal to or less than one hundred thirty-three percent (133%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits;

(4) Children aged 6 through 18 with family incomes equal to or less than the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits. Services to pregnant women eligible under this section continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy. In order to reduce county administrative costs and to expedite the provision of medical services to pregnant women, to infants, and to children eligible under this section, no resources test shall be applied; and

(5) The Department of Human Resources shall provide Medicaid coverage for adoptive children with special or rehabilitative needs regardless of the adoptive family's income.

(o) The Department of Human Resources may use Medicaid funds budgeted from program services to support the cost of administrative activities to the extent that these administrative activities produce a net savings in services requirements. Administrative initiatives funded by this section shall be first approved by the Office of State Budget and Management.

(p) The Department of Human Resources shall submit a monthly status report on expenditures for acute care and long-term care services to the Fiscal Research Division and to the Office of State Budget and Management. This report shall include an analysis of budgeted versus actual expenditures for eligibles by category and for long-term care beds. In addition, the Department shall revise the program's projected spending for the current fiscal year and the estimated spending for the subsequent fiscal year on a quarterly basis. Reports for the preceding month shall be forwarded to the Fiscal Research Division and to the Office of State Budget and Management no later than the third Thursday of the month.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

NONMEDICAID REIMBURSEMENT

Sec. 23.16. Providers of medical services under the various State programs, other than Medicaid, offering medical care to citizens of the State shall be reimbursed at rates no more than those under the North Carolina Medical Assistance Program.

The Department of Human Resources may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of paragraph one, the Department of Human Resources may negotiate with providers of medical services under the various Department of Human Resources programs, other than Medicaid, for rates as close as possible to Medicaid rates for the following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are

allowable only to meet the medical needs of its non-Medicaid eligible patients, residents, and clients who require such services which cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs shall be as follows:

Family Size	Medical Eye Care Adults	All Rehabilitation	Other
1	$ 4,860	$ 8,364	$ 4,200
2	5,940	10,944	5,300
3	6,204	13,500	6,400
4	7,284	16,092	7,500
5	7,824	18,648	7,900
6	8,220	21,228	8,300
7	8,772	21,708	8,800
8	9,312	22,220	9,300

The eligibility level for children in the Medical Eye Care Program in the Division of Services for the Blind and for adults in the Clozaril Program in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall be one hundred percent (100%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year.

The Department of Human Resources shall contract at, or as close as possible to, Medicaid rates for medical services provided to residents of State facilities of the Department.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

PRIVATE AGENCY UNIFORM COST FINDING REQUIREMENT

Sec. 23.17. To ensure uniformity in rates charged to area programs and funded with State-allocated resources, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Human Resources may require a private agency that provides services under contract with two or more area programs, except for hospital services that have an established Medicaid rate, to complete an agency-wide uniform cost finding in accordance with G.S. 122C-143.2(a) and G.S. 122C-147.2. The resulting cost shall be the maximum included for the private agency in the contracting area program's unit cost finding.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

CLIENT SERVICES MONITORING

Sec. 23.17A. The Department of Human Resources, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall utilize a system of monitoring and control for client services. This system shall ascertain whether services are provided in a timely manner. Notwithstanding any other provisions of law, the Division shall withhold area mental health agencies' administrative funds until services are provided in a timely manner.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
NONSUPPLANTING OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FUNDS

Sec. 23.18. The Department of Human Resources shall ensure that counties do not reduce county appropriations and expenditures for area mental health, developmental disabilities, and substance abuse authorities because the authorities have received additional State appropriations for services.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
MIXED BEVERAGE TAX FOR AREA MENTAL HEALTH PROGRAMS

Sec. 23.19. Funds received by the Department of Human Resources from the tax levied on mixed beverages under G.S. 18B-804(b)(8) shall be expended by the Department of Human Resources as prescribed by G.S. 18B-805(h). These funds shall be allocated to the area mental health programs for substance abuse services on a per capita basis as determined by the Office of State Budget and Management's most recent estimates of county populations.

Requested by: Senators Martin of Guilford, Conder, Representatives Gardner, Hayes, Nye, Russell
WILLIE M.

Sec. 23.20. (a) Legislative Findings. -- The General Assembly finds:

(1) That there is a need in North Carolina to provide appropriate treatment and education programs to children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior;

(2) That children meeting these criteria have been identified as a Class in the case of Willie M., et al. v. Hunt, et al., formerly Willie M., et al. v. Martin, et al.; and

(3) That these children have a need for a variety of services, in addition to those normally provided, that may include, but are not limited to, residential treatment services, educational services, and independent living arrangements.

(b) Funds appropriated by the General Assembly to the Department of Human Resources for serving members of the Willie M. Class shall be expended only for programs serving members of the Willie M. Class identified in Willie M., et al. v. Hunt, et al., formerly Willie M., et al. v. Martin, et al., including evaluations of potential Class members. The Department shall reallocate these funds among services to Willie M. Class members during the year as it deems advisable in order to use the funds efficiently in providing appropriate services to Willie M. Class children.

(c) Funds for Department of Public Education. -- Funds appropriated to the Department of Public Education in this act for members of the Willie M. Class are to establish a supplemental reserve fund to serve only members of the Class identified in Willie M., et al. v. Hunt, et al., formerly Willie M., et al. v. Martin, et al. These funds shall be allocated by the State Board of Education to the local education agencies to serve those Class members who were not included in the regular average daily membership

and the census of children with special needs, and to provide the additional program costs which exceed the per pupil allocation from the State Public School Fund and other State and federal funds for children with special needs.

(d) The Department of Human Resources shall continue to implement its prospective unit cost reimbursement system and shall ensure that unit cost rates reflect reasonable costs by conducting cost center service type rate comparisons and cost center line item budget reviews as may be necessary, and based upon these reviews and comparisons, the Department shall reduce and/or cap rates to programs which are significantly higher than those rates paid to other programs for the same service.

Any exception to this requirement shall be approved by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and shall be reported in the Department's annual joint report to the Governor and the General Assembly and in any periodic report the Department may make to the Joint Legislative Commission on Governmental Operations.

(d1) The Department of Human Resources shall implement a process to review those cases for whom treatment has been recommended whose annual cost is anticipated to be in excess of one hundred fifty percent (150%) of the average annual per client expenditure of the previous fiscal year and shall take actions to reduce these treatment costs where appropriate.

(e) Reporting Requirements. -- The Department of Human Resources and the Department of Public Education shall submit, by May 1 of each fiscal year, a joint report to the Governor and the General Assembly on the progress achieved in serving members of the Willie M. Class. The report shall include the following unduplicated data for each county: (i) the number of children nominated for the Willie M. Class; (ii) the number of children actually identified as members of the Class in each county; (iii) the number of children served as members of the Class in each county; (iv) the number of children who remain unserved or for whom additional services are needed in order to be determined to be appropriately served; (v) the types and locations of treatment and education services provided to Class members; (vi) the cost of services, by type, to members of the Class and the maximum and minimum rates paid to providers for each service; (vii) the number of cases whose treatment costs were in excess of one hundred fifty percent (150%) of the average annual per client expenditure; (viii) information on the impact of treatment and education services on members of the Class; (ix) an explanation of, and justification for, any waiver of departmental rules that affect the Willie M. program; and (x) the total State funds expended, by program, on Willie M. Class members, other than those funds specifically appropriated for the Willie M. programs and services.

(e1) From existing funds available to it, the Department of Human Resources shall begin a process to document and assess individual Class members' progress through the continuum of services. Standardized measures of functioning shall be administered periodically to each member of the Class, and the information generated from these measures shall be used to assess client progress and program effectiveness.

(f) The Departments of Human Resources and Public Education shall provide periodic reports of expenditures and program effectiveness on behalf of the Willie M. Class to the Fiscal Research Division. As part of these reports, the Departments shall explain measures they have taken to control and reduce program expenditures.

(g) In fulfilling the responsibilities vested in it by the Constitution of North Carolina, the General Assembly finds:

(1) That the General Assembly has evaluated the known needs of the State and has endeavored to satisfy those needs in comparison to their social and economic priorities; and

(2) That the funds appropriated will enable the development and implementation of placement and services for the Class members in Willie M., et al. v. Hunt, et al., formerly Willie M., et al. v. Martin, et al., within a reasonable period of time considered within the context of the needs of the Class members, the other needs of the State and the resources available to the State.

(h) The General Assembly supports the efforts of the responsible officials and agencies of the State to meet the requirements of the court order in Willie M., et al. v. Hunt, et al., formerly Willie M., et al. v. Martin, et al. To ensure that Willie M. Class members are appropriately served, no State funds shall be expended on placement and services for Willie M. Class members except:

(1) Funds specifically appropriated by the General Assembly for the placement and services of Willie M. Class members; and

(2) Funds for placement and services for which Willie M. Class members are otherwise eligible.

This limitation shall not preclude the use of unexpended Willie M. funds from prior fiscal years to cover current or future needs of the Willie M. program subject to approval by the Director of the Budget. These Willie M. expenditures shall not be subject to the requirements of G.S. 143-18.

(i) Notwithstanding any other provision of law, if the Department of Human Resources determines that a local program is not providing appropriate services to members of the Class identified in Willie M., et al. v. Hunt, et al., formerly Willie M., et al. v. Martin, et al., the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department of such programs.

Requested by: Senators Martin of Guilford, Conder, Representatives Gardner, Hayes, Nye, Russell

THOMAS S.

Sec. 23.21. (a) Funds appropriated to the Department of Human Resources in this act for the 1995-96 fiscal year and the 1996-97 fiscal year for members of the Thomas S. Class as identified in Thomas S., et al. v. Britt, formerly Thomas S., et al. v. Flaherty, shall be expended only for programs serving Thomas S. Class members or for services for those clients who are:

(1) Adults with mental retardation, or who have been treated as if they had mental retardation, who were admitted to a State psychiatric hospital on or after March 22, 1984, and who are included on the

Division of Mental Health, Developmental Disabilities, and Substance Abuse Services' official list of prospective Class members;

(2) Adults with mental retardation who have a documented history of State psychiatric hospital admissions regardless of admission date and who, without funding support, have a good probability of being readmitted to a State psychiatric hospital;

(3) Adults with mental retardation who have never been admitted to a State psychiatric hospital but who have a documented history of behavior determined to be of danger to self or others that results in referrals for inpatient psychiatric treatment and who, without funding support, have a good probability of being admitted to a State psychiatric hospital; or

(4) Adults who are included on the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services' official list of prospective Class members and have yet to be confirmed as Class members, who currently reside in the community, and who have a good probability of being admitted to a facility licensed as a "home for the aged and disabled".

No more than five percent (5%) of the funds appropriated in this act for the Thomas S. program shall be used for clients meeting subdivisions (2), (3), or (4) of this subsection.

(b) To ensure that Thomas S. Class members are appropriately served, no State funds shall be expended on placement and services for Thomas S. Class members except:

(1) Funds specifically appropriated by the General Assembly for the placement and services of Thomas S. Class members; and

(2) Funds for placement and services for which Thomas S. Class members are otherwise eligible.

(c) The Department of Human Resources shall continue to implement a prospective unit cost reimbursement system and shall ensure that unit cost rates reflect reasonable costs by conducting cost center service type rate comparisons and cost center line item budget reviews as may be necessary.

(d) Reporting requirements. The Department of Human Resources shall submit by April 1 of each fiscal year a report to the General Assembly on the progress achieved in serving members and prospective members of the Thomas S. Class. The report shall include the following:

(1) The number of Thomas S. clients confirmed as Class members;

(2) The number of prospective Class members evaluated;

(3) The number of prospective Class members awaiting evaluation;

(4) The number of Class members or prospective Class members added in the preceding 12 months due to their admission to a State psychiatric hospital;

(5) A description of the types of treatment services provided to Class members; and

(6) An analysis of the use of funds appropriated for the Class.

(e) Notwithstanding any other provision of law, if the Department of Human Resources determines that a local program is not providing minimally adequate services to members of the Class identified in Thomas

S., et al. v. Britt, formerly Thomas S., et al. v. Flaherty, or does not show a willingness to do so, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department of these programs.

Requested by: Senators Martin of Guilford, Conder, Representatives Gardner, Hayes, Nye, Russell

MENTAL HEALTH COUNTY FUNDS REQUIREMENT

Sec. 23.21B. Notwithstanding any other provisions of law, the Department of Human Resources shall ensure that counties do not reduce county appropriations and expenditures for area mental health, developmental disabilities, and substance abuse authorities because of the availability of State-allocated funds, fees, or capitation amounts to the authorities.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

FOSTER CARE REPORTING

Sec. 23.22. Counties receiving funds for foster care shall report annually, beginning with the 1995-96 fiscal year, to the Division of Social Services, Department of Human Resources, the following:

(1) A narrative description of the use of State funds;
(2) Workload statistics and indicators for foster care as established by the Division of Social Services; and
(3) Development of a coordinated approach to providing children's services, with emphasis on meeting the total needs of the children and families being served.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

ADOPTION SUBSIDY

Sec. 23.23. The maximum rates for State participation in the adoption assistance program are established on a graduated scale as follows:

(1) $315.00 per child per month for children aged birth through 5;
(2) $365.00 per child per month for children aged 6 through 12; and
(3) $415.00 per child per month for children aged 13 through 18.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

FOSTER CARE

Sec. 23.24. The maximum rates for State participation in the foster care assistance program are established on a graduated scale as follows:

(1) $315.00 per child per month for children aged birth through 5;
(2) $365.00 per child per month for children aged 6 through 12; and
(3) $415.00 per child per month for children aged 13 through 18.

Of these amounts, fifteen dollars ($15.00) is a special needs allowance for the child.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

FOSTER CARE AND ADOPTION TRAINING

Sec. 23.25. The Division of Social Services, Department of Human Resources, shall continue the in-house training component that provides a

mandated minimum of 30 hours of preservice training for foster care parents and 84 hours for foster care workers and adoption care workers and a mandated minimum of 10 hours of continuing education for all foster care parents and 18 hours for foster care workers and adoption care workers.

This section remains in effect until modified or repealed by the General Assembly.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

CHILD PROTECTIVE SERVICES

Sec. 23.26. (a) The funds appropriated in this act to the Department of Human Resources, Division of Social Services, for the 1995-96 fiscal year for Child Protective Services shall be allocated to county departments of social services based upon a formula which takes into consideration the number of Child Protective Services cases in that county and the number of Child Protective Services workers necessary to meet recommended standards adopted by the North Carolina Association of County Directors of Social Services.

(b) Funds allocated under subsection (a) of this section shall be used by county departments for carrying out investigations of reports of child abuse or neglect or for providing protective or preventive services in which the department confirms abuse, neglect, or dependency.

(c) The Division of Social Services, Department of Human Resources, shall establish criteria and guidelines to ensure that the allocations to county departments of social services are used in accordance with this section and that available Federal Emergency Assistance funds for Child Protective Services are maximized.

(d) As long as federal Emergency Assistance funds are available, counties shall use these federal funds, State Child Protective Services appropriations, and county funds to provide Child Protective Services.

Requested by: Senators Martin of Guilford, Conder, Representatives Gardner, Hayes, Nye, Russell

LIMITATION ON STATE ABORTION FUND

Sec. 23.27. (a) No State funds, whether from tax revenues, gifts, bequests, grants, or any other source, in excess of fifty thousand dollars ($50,000) each fiscal year of the biennium shall be expended for the State Abortion Fund's funding of the performance of abortions.

(b) Eligibility for services of the State Abortion Fund shall be limited to women whose income is below the federal poverty level, as revised annually, or who are eligible for Medicaid. The State Abortion Fund shall be used to fund abortions only to terminate pregnancies resulting from cases of rape or incest, or to terminate pregnancies that, in the written opinion of one doctor licensed to practice medicine in North Carolina, endanger the life of the mother.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

HIV FOSTER CARE AND ADOPTIONS BOARD PAYMENT

Sec. 23.28. The maximum rates for State participation in HIV Foster Care and Adoptions Board Payments are established on a graduated scale as follows:

(1) $800.00 per month per child with indeterminate HIV status;
(2) $1,000 per month per child confirmed HIV-infected, asymptomatic;
(3) $1,200 per month per child confirmed HIV-infected, symptomatic; and
(4) $1,600 per month per child terminally ill with complex care needs.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

FOOD STAMP OUTREACH

Sec. 23.29. The Department of Human Resources shall continue a Food Stamp Outreach Program. Under the Program, the Department shall inform public and private agencies, community groups, potentially eligible persons, and the general public regarding the eligibility requirements of the Food Stamp Program. The Department shall maintain a referral list of public and private agencies, community groups, and interested persons and organizations who serve low-income persons. The Department shall inform these agencies and persons regarding the Food Stamp Program and changes in the law that affect client eligibility or the extent of benefits. The Department shall develop and distribute informational materials, such as public service announcements, brochures, pamphlets, posters, and correspondence.

Requested by: Senators Martin of Guilford, Conder, Representatives Gardner, Hayes, Nye, Russell

AFDC PROGRAMS AND SERVICES FOR WOMEN IN THE THIRD TRIMESTER OF PREGNANCY

Sec. 23.29A. Women in their third trimester of pregnancy with their first child who otherwise meet all the eligibility criteria for Aid to Families with Dependent Children (AFDC) are eligible for all programs and services available to AFDC recipients other than AFDC cash assistance.

Requested by: Senators Martin of Guilford, Conder, Representatives Gardner, Hayes, Nye, Russell

EMERGENCY ASSISTANCE

Sec. 23.29C. The Division of Social Services, Department of Human Resources, shall not expend more State funds than are appropriated for the cash assistance component of the Emergency Assistance Program for the 1995-97 fiscal biennium. Within this limit, Emergency Assistance cash benefits shall not exceed three hundred dollars ($300.00) per year per family, payable over a 30-day period. After this 30-day period, Emergency Assistance cash benefits are not available to that family until 12 months have elapsed from the initial authorization date. The family may have no more than a total of three hundred dollars ($300.00) in liquid assets in order to quality for the cash assistance component of the Emergency Assistance Program pursuant to this section.

It is the intent of the General Assembly that cash benefits under the Emergency Assistance Program shall only be used to provide assistance to persons to alleviate an emergency. In evaluating whether an emergency exists, the agency receiving the application shall apply prudent judgment to evaluate each emergency on its own merits. Prudent judgment will permit the agency to consider whether the client created the emergency and whether the assistance will resolve the emergency.

Requested by: Senators Martin of Guilford, Conder, Representatives Gardner, Hayes, Nye, Russell

FAMILY SUPPORT ACT

Sec. 23.29D. (a) The General Assembly finds that it is in the best interest of the State and of all its citizens to encourage recipients of Aid to Families with Dependent Children (AFDC) to obtain jobs and become self-sufficient. It further finds that, by continuing medical assistance and providing limited wage assistance to those recipients who are working, the State will make it possible to help many recipients to be able to keep their jobs, support their families, and become self-sufficient.

Therefore, the General Assembly adopts a payment method that will result in more recipients being able to find work and keep working.

(b) AFDC payments shall be determined by subtracting countable income from the State standard of need, and paying a percentage of the difference. The percentage that shall be applied to determine the amount of assistance shall be the same percentage set in this act that determines the AFDC payment level from the standard of need.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

SENIOR CENTER OUTREACH

Sec. 23.30. (a) Funds appropriated to the Department of Human Resources, Division of Aging, for the 1995-97 fiscal biennium, shall be used by the Division of Aging to enhance senior center programs as follows:

(1) To test "satellite" services provided by existing senior centers to unserved or underserved areas; or

(2) To provide start-up funds for new senior centers.

All of these funds shall be allocated by October 1 of each fiscal year.

(b) Prior to funds being allocated pursuant to this section for start-up funds for a new senior center, the county commissioners of the county in which the new center will be located shall:

(1) Formally endorse the need for such a center;

(2) Formally agree on the sponsoring agency for the center; and

(3) Make a formal commitment to use local funds to support the ongoing operation of the center.

(c) State funding shall not exceed ninety percent (90%) of reimbursable costs.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

CAREGIVER SUPPORT SHARING

Sec. 23.31. (a) Of the funds appropriated to the Division of Aging, Department of Human Resources, for the 1995-97 fiscal biennium, the sum

of one million eight thousand dollars ($1,008,000) for the 1995-96 fiscal year and the sum of one million eight thousand dollars ($1,008,000) for the 1996-97 fiscal year shall be used for services that support family caregivers of elderly persons with functional disabilities, whether physical or mental, who want to stay in their homes rather than be institutionalized but who need assistance with the activities of daily living in order to remain at home. The services that may be purchased from funds received under this section include:

(1) Respite Care;
(2) Adult Day Care;
(3) Stipends and other related costs for senior companions, modeled after the federal Senior Companion Program; and
(4) Other related services that meet needs not now adequately addressed by the services described in subdivisions (1) through (3) of this subsection.

(b) The Division of Aging shall expend funds for these services according to the population of persons 70 years of age or older in each region. The Division of Aging shall use a minimum of ninety-five percent (95%) of the funds it receives under this section for the services described in subdivisions (1) through (4) of subsection (a) of this section and may only use a maximum of five percent (5%) for technical assistance as described in subsection (c) of this section. The Division of Aging shall choose providers in accordance with procedures under the Older Americans Act. Funds allocated by the Division pursuant to this section shall be allocated by October 1 of each fiscal year.

(c) The Division of Aging may contract for technical assistance. The technical assistance shall include training assistance, coordination of various service delivery and funding sources, and ideas for innovative ways to build a lasting system of services for family caregivers.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

REIMBURSEMENT AND COMPENSATION OF MEMBERS OF THE NORTH CAROLINA VOCATIONAL REHABILITATION ADVISORY COUNCIL, THE STATEWIDE INDEPENDENT LIVING COUNCIL, AND THE COMMISSION FOR THE BLIND

Sec. 23.32. Notwithstanding G.S. 138-5(a)(1), those members of the North Carolina Vocational Rehabilitation Advisory Council, the Statewide Independent Living Council, and the Commission for the Blind, who are unemployed or who must forfeit wages from other employment to attend council or commission meetings or to perform related duties, may receive compensation not to exceed fifty dollars ($50.00) a day for attending these meetings or for performing related duties, as authorized in Sections 105 and 705 of P.L. 102-569, the Rehabilitation Act of 1973, 42 U.S.C. § 701 et seq., as amended. This compensation is instead of the compensation specified in G.S. 138-5(a)(1). Reimbursement for subsistence and travel expenses is as specified in G.S. 138-5.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

DHR STUDY OF DIVISION OF YOUTH SERVICES' PROGRAMS AND SERVICES EXTENDED

Sec. 23.34. Section 25.26 of Chapter 769 of the 1993 Session Laws, Regular Session 1994, which amended subsection (d) of Section 36 of Chapter 24 of the Session Laws of the 1994 Extra Session reads as rewritten:

"Sec. 25.26. Subsection (d) of Section 36 of Chapter 24 of the 1994 Extra Session reads as rewritten:

'(d) The Department shall complete this study by ~~March 1, 1995,~~ October 1, 1995, and shall report the results of this study to the 1995 General Assembly by ~~April 1, 1995.~~ November 1, 1995.'"

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

COMMUNITY-BASED ALTERNATIVES PARTICIPATION

Sec. 23.35. County governments participating in the Community-Based Alternatives Program shall certify annually to the Division of Youth Services, Department of Human Resources, that Community-Based Alternatives Aid to Counties shall not be used to duplicate or supplant other programs within the county.

PART 24. DEPARTMENT OF AGRICULTURE

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

AUTHORIZE THE AGRICULTURAL FINANCE AUTHORITY TO USE THE INTEREST FROM THE RESERVE FOR FARM LOANS FOR ADMINISTRATIVE EXPENSES

Sec. 24. Funds in the Reserve for Farm Loans shall be used for the purposes set out in Chapter 122D of the General Statutes, but shall not be used for the administration of that Chapter. Interest on funds in the Reserve for Farm Loans and interest from agricultural loans, as defined in G.S. 122D-3, may be used for any of the purposes set out in Chapter 122D of the General Statutes and for the administration of that Chapter.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

STUDY REGARDING THE STATE FARMERS MARKETS COSTS

Sec. 24.1. The Department of Agriculture shall evaluate and recommend options for each of the State's Farmers Markets to reach a goal of becoming self-supporting within four years. No later than April 1, 1996, the Department shall report its findings and recommendations to the Joint Legislative Commission on Governmental Operations.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

FEASIBILITY STUDY REGARDING FEES AT THE MARITIME MUSEUM

Sec. 24.2. The Department of Agriculture shall study the feasibility of charging admission fees at the North Carolina Maritime Museum. This study shall evaluate different options for admission fees and shall include a proposed implementation plan, anticipated revenues, anticipated costs of developing and implementing admission fees, and anticipated personnel that

would be required for each admission fee option. No later than April 1, 1996, the Department shall report its findings and recommendations to the Joint Legislative Commission on Governmental Operations.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt
TIMBER SALES FUNDS FOR MAINTENANCE OF STATE FARMS FORESTLANDS

Sec. 24.3. From funds received from the sale of timber that are deposited with the State Treasurer pursuant to G.S. 146-30 to the credit of the Department of Agriculture in a capital improvement account, the sum of twenty thousand dollars ($20,000) is transferred to the Reserve for Forest Management for expenditure during the 1995-96 fiscal year and the sum of twenty thousand dollars ($20,000) is transferred to the Reserve for Forest Management for expenditure during the 1996-97 fiscal year. The Department may increase its expenditures of timber receipts by twenty thousand dollars ($20,000) each year, provided that the maximum expenditure in each fiscal year shall not exceed fifty thousand dollars ($50,000). These funds are in addition to any other funds already in that Reserve.

PART 25. DEPARTMENT OF COMMERCE

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt
INDUSTRIAL DEVELOPMENT FUND/LOCAL MATCH

Sec. 25. Local governments requesting financial assistance from the Industrial Development Fund that wish to request to be exempted from the local matching requirements placed on the receipt of this assistance shall demonstrate to the satisfaction of the Department of Commerce that it would be an economic hardship for the local government to match State assistance from the Fund with local funds. The Department shall develop guidelines for determining hardship.

Requested by: Senators Martin of Pitt, Edwards, Representatives Mitchell, Weatherly, Crawford
REGIONAL COMMISSION REPORTS

Sec. 25.3. The regional economic development commissions receiving grants-in-aid from the Department of Commerce shall report on their programs to the Joint Legislative Commission on Governmental Operations on or before March 1 and October 1 of each fiscal year, and more frequently as requested by the Commission. The reports shall include information on the activities and accomplishments during the past fiscal year, itemized expenditures during the past fiscal year with sources of funding, planned activities and accomplishments for at least the next 12 months, and itemized anticipated expenditures with sources of funding for the next 12 months.

Requested by: Senators Martin of Pitt, Edwards, Representatives Mitchell, Weatherly, Crawford

REGIONAL ECONOMIC DEVELOPMENT COMMISSION ALLOCATIONS

Sec. 25.4. (a) Funds appropriated in this act to the Department of Commerce for regional economic development commissions shall be allocated to the following commissions in accordance with subsection (b) of this section: Western North Carolina Regional Economic Development Commission, Research Triangle Regional Commission, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, Northeastern North Carolina Regional Economic Development Commission, Global TransPark Development Commission, and Carolinas Partnership, Inc.

(b) Funds appropriated pursuant to subsection (a) of this section shall be allocated to each regional economic development commission as follows:

(1) First, the Department shall establish each commission's allocation by determining the sum of allocations to each county that is a member of that commission. Each county's allocation shall be determined by dividing the county's distress factor by the sum of the distress factors for eligible counties and multiplying the resulting percentage by the amount of the appropriation. As used in this subdivision, the term "distress factor" means a county's distress factor as calculated under G.S. 105-130.40(c);

(2) Next, the Department shall subtract from funds allocated to the Global TransPark Development Zone the sum of three hundred fifteen thousand dollars ($315,000) in each fiscal year, which sum represents the interest earnings of the Global TransPark Development Zone in each fiscal year; and

(3) Next, the Department shall redistribute the sum of three hundred fifteen thousand dollars ($315,000) in each fiscal year to the seven regional economic development commissions named in subsection (a) of this section. Each commission's share of this redistribution shall be determined according to the distress factor formula set out in subdivision (1) of this subsection. This redistribution shall be in addition to each commission's allocation determined under subdivision (1) of this subsection.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

TOURISM PROMOTION FUNDS

Sec. 25.5. Funds appropriated in this act to the Department of Commerce for tourism promotion grants shall be allocated according to per capita income, unemployment, and population growth in an effort to direct funds to counties most in need in terms of lowest per capita income, highest unemployment, and slowest population growth, in the following manner:

(1) Counties 1 through 20 are each eligible to receive a maximum grant of $7,500 for each fiscal year, provided these funds are matched on the basis of one non-State dollar for every four State dollars.

(2) Counties 21 through 50 are each eligible to receive a maximum grant of $3,500 for two of the next three fiscal years, provided

these funds are matched on the basis of one non-State dollar for every three State dollars.

(3) Counties 51 through 100 are each eligible to receive a maximum grant of $3,500 for alternating fiscal years, beginning with the 1991-92 fiscal year, provided these funds are matched on the basis of four non-State dollars for every State dollar.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

BIOTECHNOLOGY CENTER

Sec. 25.7. (a) The North Carolina Biotechnology Center shall recapture funds spent in support of successful research efforts in the nonacademic private sector.

(b) The North Carolina Biotechnology Center shall provide funding for biotechnology and related bioscience applications under its Economic and Corporate Development Program.

(c) The North Carolina Biotechnology Center shall report on all of the Center's programs to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on or before March 1 of each fiscal year, and more frequently as requested by the Commission. The initial report shall include information on the activities and accomplishments during the past fiscal year, itemized expenditures during the past fiscal year with sources of funding, planned activities and accomplishments for at least the next 12 months, and itemized anticipated expenditures with sources of funding for the next 12 months. Subsequent reports shall include updates of the initial report.

(d) The North Carolina Biotechnology Center shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management and to the Fiscal Research Division in the same manner as State departments and agencies in preparation for biennium budget requests.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

BIOTECHNOLOGY FUNDS FOR MINORITY UNIVERSITIES

Sec. 25.8. Of the funds appropriated in this act from the General Fund to the North Carolina Biotechnology Center for the 1995-96 and the 1996-97 fiscal years, the sum of one million dollars ($1,000,000) in each fiscal year shall be used to continue the special biotechnology program initiative for North Carolina's Public Historically Black Universities and Pembroke State University. This program initiative is a means to get more funds to these institutions of higher education in the short run to help them develop their biotechnology programs and a means to develop a mechanism to improve these institutions' capacity over the long term. The Center's special initiative shall, at a minimum, provide for:

(1) A range of program activities, including grants, designed to enhance the existing strengths and capabilities of Pembroke State University, and the Public Historically Black Universities;

(2) A Facilities and Infrastructure Review Committee to advise the Center on major program elements and priority projects that would be most helpful to these institutions; and

(3) A Program Advisory Panel with representation from these institutions to advise and make recommendations to the Center's President and Board of Directors on funding proposals under this initiative.

The Center shall report on its biotechnology program grants to universities to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on or before March 1 of each fiscal year, and more frequently as requested by the Commission. These reports shall include the current number of enrollments and the capacity of enrollments in the biotechnology program in each of the universities, the number of faculty in the biotechnology program in each of the universities, whether and to what extent the enrollments, capacity, and number of faculty have changed in the last three academic years in the biotechnology program in each of the universities, how the funds allocated by this section are being used in each of the universities, and any other information that indicates whether these grants are accomplishing their purpose.

Requested by: Senators Martin of Pitt, Edwards, Representatives Mitchell, Crawford, Weatherly

MCNC

Sec. 25.9. (a) MCNC shall report on all of its programs to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on or before March 1 of each fiscal year, and more frequently as requested by the Commission. The reports shall include information on the activities and accomplishments during the past fiscal year, itemized expenditures during the past fiscal year with sources of funding, planned activities, and accomplishments for at least the next 12 months, and itemized anticipated expenditures with sources of funding for the next 12 months. The report on the activities of the Supercomputer program shall identify the users of the Supercomputer, the major projects conducted by the users, and the potential benefits of the projects.

(b) MCNC shall provide a report containing detailed budget information to the Office of State Budget and Management in the same manner as State departments and agencies in preparation for biennium budget requests. Specific salary information will be provided upon written request by the Chairs of the Joint Legislative Commission on Governmental Operations or the Chairs of the House Appropriations Subcommittee on Natural and Economic Resources and the Chairs of the Senate Appropriations Committee on Natural and Economic Resources.

(c) The funds appropriated in this act to MCNC shall be used as follows:

	FY 1995-96	FY 1996-97
Microelectronics Program	$5,362,523	$5,362,523
Supercomputer	9,576,319	9,576,319
Telecommunications	4,826,158	4,826,158

(d) Of the funds appropriated to MCNC for the Microelectronics Program, five million three hundred sixty-two thousand five hundred twenty-three dollars ($5,362,523) in each fiscal year is contingent upon a dollar-for-dollar match in non-State funds.

(e) If MCNC finds it necessary to make changes in the program allocations specified in subsection (c) of this section, MCNC shall report such changes to the Joint Legislative Commission on Governmental Operations 30 days before the reallocation.

(f) Funds appropriated in this act to MCNC for Migration of Current Network to the North Carolina Information Highway System (NCIHS) shall be used as follows:

(1) To cover the costs of connecting and operating the North Carolina Research and Education Network through the North Carolina Information Highway so that universities and research centers will continue to have the capability currently available through the North Carolina Research and Education Network,
(2) For program support, and
(3) For MCNC to serve as gateway to the North Carolina Information Highway for the 18 sites.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

MCNC PLAN FOR SELF-SUPPORT

Sec. 25.10. MCNC shall develop a plan for carrying out its statutory, contractual, and other duties, responsibilities, and purposes without financial support from the State through General Fund or other appropriations. The plan shall provide for MCNC to be totally self-supporting by July 1, 1999. MCNC shall submit the plan to the Joint Legislative Commission on Governmental Operations not later than April 1, 1996. The plan shall indicate, at a minimum, the following:

(1) Financial support received from State appropriations for each of the last six years;
(2) Activities and purposes for which State appropriated funds were used over the last six years;
(3) Funds that will be needed to continue operations over each of the fiscal years commencing July 1, 1995; and
(4) Public and private sources and amounts of anticipated revenue for each fiscal year commencing July 1, 1995 through June 30, 2001.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

RURAL ECONOMIC DEVELOPMENT CENTER

Sec. 25.11. (a) Of the funds appropriated in this act to the Rural Economic Development Center the sum of one million two hundred seventy thousand dollars ($1,270,000) for the 1995-96 fiscal year and the sum of one million two hundred seventy thousand dollars ($1,270,000) for the 1996-97 fiscal year shall be allocated as follows:

	95-96 FY	96-97 FY
Research & Demonstration Grants	$475,864	$475,864
Technical Assistance and Center Administration of Research and Demonstration Grants	444,136	444,136
Center Administration, Oversight, and Other Programs	350,000	350,000

(b) The Rural Economic Development Center, Inc., shall report on the Center's programs to the Joint Legislative Commission on Governmental Operations on or before March 1 of each fiscal year, and more frequently as requested by the Commission. The report shall include information on the activities and accomplishments during the fiscal year, itemized expenditures during the fiscal year with sources of funding, planned activities and accomplishments for at least the next 12 months, and itemized anticipated expenditures with sources of funding for the next fiscal year.

(c) The Rural Economic Development Center, Inc., shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management in the same manner as State departments and agencies in preparation for biennium budget requests.

(d) Not more than fifty percent (50%) of the interest earned on State funds appropriated to the Rural Economic Development Center, Inc., may be used by the Rural Economic Development Center, Inc., for administrative purposes, including salaries and fringe benefits.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

OPPORTUNITIES INDUSTRIALIZATION CENTER FUNDS

Sec. 25.12. Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of one hundred thousand dollars ($100,000) for the 1995-96 fiscal year and the sum of one hundred thousand dollars ($100,000) for the 1996-97 fiscal year shall be allocated as follows:

(1) $25,000 in each fiscal year to the Opportunities Industrialization Center of Wilson, Inc., for its ongoing job training programs;
(2) $25,000 in each fiscal year to Opportunities Industrialization Center, Inc., in Rocky Mount, for its ongoing job training programs;
(3) $25,000 in each fiscal year to Pitt-Greenville Opportunities Industrialization Center, Inc. for its ongoing job training programs; and
(4) $25,000 in each fiscal year to the Opportunities Industrialization Center of Lenoir, Green, and Jones Counties.

The Rural Economic Development Center, Inc., shall report on the use of these funds to the Joint Legislative Commission on Governmental Operations on or before March 1 of each fiscal year, and more frequently as requested by the Commission.

Requested by: Representatives Weatherly, Mitchell, Crawford, Senators Martin of Pitt, Edwards

COMMUNITY DEVELOPMENT INITIATIVE

Sec. 25.13. Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of one million eight hundred thousand dollars ($1,800,000) for fiscal year 1995-96 and the sum of one million eight hundred thousand dollars ($1,800,000) for fiscal year 1996-97 shall be used to support the grant and loan fund and operations of the North Carolina Community Development Initiative, Inc. The Initiative shall provide operating and project activity grants to mature community

development corporations that have demonstrated project and organizational capacity.

The North Carolina Community Development Initiative, Inc., shall report to the Joint Legislative Commission on Governmental Operations on the use of these funds on or before March 1 of each fiscal year, and more frequently as requested by the Commission.

PART 26. DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Requested by: Representatives Baker, Nichols, Senator Martin of Pitt

EHNR STUDY STATE-FUNDED ENVIRONMENTAL EDUCATION

Sec. 26. The Department of Environment, Health, and Natural Resources shall prepare a report identifying all State-funded environmental education programs, activities, and initiatives statewide, including efforts by all State entities as well as efforts by other entities funded by grants-in-aid. In addition, the Department shall include in its report a plan for consolidating some or all of these programs, activities, and initiatives. The Department shall submit this report on or before January 15, 1996, to the Joint Legislative Commission on Governmental Operations.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

FUNDS FOR VOLUNTARY REMEDIAL ACTIONS

Sec. 26.1. (a) During the 1995-97 fiscal biennium, the Secretary of Environment, Health, and Natural Resources may contribute from the Inactive Hazardous Sites Cleanup Fund up to ten percent (10%) of the cost each fiscal year, not to exceed fifty thousand dollars ($50,000) per site, of implementing a voluntary remedial action program at up to three high-priority sites that substantially endanger public health or the environment.

(b) No later than April 1 of each year of the 1995-97 fiscal biennium, the Department of Environment, Health, and Natural Resources shall report to the General Assembly. Each report shall contain the location of the sites for which a voluntary remedial action program was implemented under subsection (a) of this section, the rationale for the State contributing to the cost of that remedial action, and the amount of the contribution made from the Inactive Hazardous Sites Cleanup Fund.

Requested by: Senators Martin of Pitt, Edwards, Representatives Mitchell, Weatherly, Crawford

WASTE REDUCTION ASSISTANCE TO SMALL BUSINESSES WITH NEED

Sec. 26.2A. The Office of Waste Reduction shall, to the extent feasible, give greatest priority to small businesses that can demonstrate financial need when the Office of Waste Reduction awards grants or otherwise provides technical or financial assistance.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

PARTNERSHIP FOR THE SOUNDS, INC.

Sec. 26.3. Partnership for the Sounds, Inc., shall report on all of its programs to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on March 1 of each fiscal year, and more frequently as requested by the Commission. The reports shall include information on the activities and the accomplishments during the past fiscal year, itemized expenditures during the past fiscal year with sources of funding, planned activities, and accomplishments for at least the next 12 months, and itemized anticipated expenditures with sources of funding for the next 12 months.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

COMMUNICABLE DISEASE CONTROL AID TO COUNTIES FLEXIBILITY

Sec. 26.4. (a) For the 1995-96 and 1996-97 fiscal years, the Department of Environment, Health, and Natural Resources may combine and allocate funds appropriated for Aid to Counties in the Acute Communicable Disease Control Fund, the Tuberculosis Control Fund, and the Sexually Transmitted Disease Control Fund into one Acute Communicable Disease Control Aid to Counties Grant. Communicable Disease Aid to Counties funding to local health departments and other authorized recipients will be based on a general communicable disease formula to be developed by the Department of Environment, Health, and Natural Resources.

(b) The Department of Environment, Health, and Natural Resources, in conjunction with local health departments, will maintain a system to monitor and identify Aid to Counties communicable disease expenditures by each communicable disease group. The Department shall report to the Joint Legislative Commission on Governmental Operations not later than October 1, 1995, and annually thereafter, on Aid to Counties expenditures by county for each communicable disease group and the purpose of the expenditures for the fiscal year. The report shall also include an evaluation of the effectiveness of combining Aid to Counties funding into one grant fund and the effectiveness of the formula used to allocate funds.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

DWI TEST CHANGES

Sec. 26.5. (a) Section 272 of Chapter 321 of the 1993 Session Laws is repealed.

(b) Amounts collected under G.S. 20-16.5(j) for fiscal years 1993-94 and 1994-95 and designated for the alcohol testing program of the Injury Control Section of the Department of Environment, Health, and Natural Resources shall not revert to the General Fund unless the amounts exceed the amounts appropriated by the General Assembly for the 1993-94 and 1994-95 fiscal years.

Beginning with the 1995-96 fiscal year, any funds collected under G.S. 20-16.5(j) that are designated for the alcohol testing program of the Injury Control Section of the Department of Environment, Health, and Natural Resources and are not needed for that program shall be transferred annually to the Governor's Highway Safety Program for grants to local law

enforcement agencies for training and enforcement of the laws on driving while impaired. The Governor's Highway Safety Program shall expend funds transferred to it under this section within 13 months of receipt of the funds. Amounts received by the Governor's Highway Safety Program shall not revert until the June 30 following the 13-month period.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

IMMUNIZATION PROGRAM FUNDING

Sec. 26.6. (a) Of the funds appropriated to the Department of Environment, Health, and Natural Resources for the 1995-97 fiscal biennium for childhood immunization programs for positions, operating support, equipment, and pharmaceuticals, the sum of up to one million dollars ($1,000,000) each fiscal year may be used for projects and activities that are also designed to increase childhood immunization rates in North Carolina. These projects and activities shall include the following:

(1) Outreach efforts at the State and local levels to improve service delivery of vaccines. Outreach efforts may include educational seminars, media advertising, support services to parents to enable children to be transported to clinics, longer operating hours for clinics, and mobile vaccine units; and

(2) Continued development of an automated immunization registry.

(b) Funds authorized to be used for immunization efforts under subsection (a) of this section shall not be used to fund additional State positions in the Department of Environment, Health, and Natural Resources.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

PUBLIC HEALTH NUTRITION INTERN PROGRAM

Sec. 26.7. Of the funds appropriated to the Department of Environment, Health, and Natural Resources for the Special Supplemental Food Program for Women, Infants, and Children (WIC), the sum of up to one hundred seventy thousand dollars ($170,000) for the 1995-96 fiscal year and the sum of up to one hundred seventy thousand dollars ($170,000) for the 1996-97 fiscal year may be used for the purpose of establishing and maintaining a Public Health Nutritionist Internship Program.

Requested by: Senators Martin of Pitt, Edwards, Representatives Mitchell, Weatherly, Crawford

MOSQUITO CONTROL FUNDS/USAGE

Sec. 26.7A. G.S. 130A-347 reads as rewritten:

"*§ 130A-347. Mosquito control funds.*

Funds received by the Department for mosquito control may be used to aid mosquito control districts and other units of local government engaged in mosquito control. The Commission shall adopt rules concerning the allocation of the funds. The rules shall provide for priority funding to those local activities that involve the abatement of breeding grounds. The rules may include provisions to withhold part of the mosquito control funds for the suppression of potential or documented mosquito-borne disease outbreaks. State aid for local physical control methods such as, but not limited to, cleaning, reopening or construction of ditches, restoration of streams and

construction of impoundments shall not exceed the amount of funds and the value of services and facilities provided locally except State aid may be provided up to twice the locally provided amount for physical control methods in salt marsh areas. State aid for local chemical and biological control methods such as, but not limited to, control of immature and adult mosquitoes by use of chemicals, bacteria, fungi and mosquito fish shall not exceed the amount of funds and the value of services and facilities provided locally. State aid shall not be granted with respect to each individual project until the Department finds and certifies in writing for each project that: (i) the required local share is available; (ii) there is a documented mosquito problem which requires abatement; (iii) a work plan describing the method and procedures to be used for abatement is appropriate; and (iv) the rules of the Commission have been met."

Requested by: Senators Martin of Pitt, Edwards, Representatives Mitchell, Weatherly, Crawford

ADOLESCENT PREGNANCY PREVENTION COALITION OF N.C./REPORTING

Sec. 26.7B. The Adolescent Pregnancy Prevention Coalition of N.C. shall report on all of its programs to the Joint Legislative Commission on Governmental Operations on or before March 1 of each fiscal year and more frequently as requested by the Commission. The reports shall include information on the Coalition's activities and accomplishments during the past fiscal year, a list of the groups, organizations, communities, and other recipients of assistance from the Coalition in the last 12 months, itemized expenditures during the past fiscal year with sources of funding, planned activities, and accomplishments for at least the next 12 months, and itemized anticipated expenditures with sources of funding for the next 12 months.

Requested by: Representatives Mitchell, Weatherly, Crawford, Senators Martin of Pitt, Edwards

AQUARIUM STUDY

Sec. 26.8. The Department of Environment, Health, and Natural Resources may study whether the State needs three aquariums and may make recommendations to the Joint Legislative Commission on Governmental Operations on or before April 1, 1996, on the beneficialness and feasibility of the consolidation of the aquariums at Fort Fisher, Pine Knoll Shores, and Roanoke Island.

Requested by: Senators Martin of Pitt, Edwards, Representatives Mitchell, Weatherly, Crawford

ADDITIONAL USE OF AQUARIUM FEES

Sec. 26.8A. Notwithstanding the provisions of G.S. 143B-344.17, the Department of Environment, Health, and Natural Resources may use funds in the North Carolina Special Aquariums Fund for one full-time position at each aquarium site to collect admission fees and to maintain records of visitors at the sites and, during high visitation periods, for seasonal temporary positions at each site for additional maintenance, housekeeping, and educational services and to collect admission fees.

Requested by: Senators Martin of Pitt, Edwards, Representatives Mitchell, Weatherly, Crawford

BLUE RIBBON ADVISORY COUNCIL ON OYSTERS

Sec. 26.8C. (a) Subsection (f) of Section 27.16 of Chapter 769 of the 1993 Session Laws reads as rewritten:

"(f) The Advisory Council shall make written quarterly reports to the Marine Fisheries Commission and the Joint Legislative Commission on Seafood and Aquaculture beginning October 1, 1994. The Advisory Council shall complete its study and make its final written report on or before ~~October 1, 1995.~~ June 30, 1997. Upon making its final written report, the Advisory Council shall terminate."

(b) Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, the sum of one hundred thousand dollars ($100,000) for the 1995-96 fiscal year and the sum of one hundred thousand dollars ($100,000) for the 1996-97 fiscal year shall be used for administrative and other expenses incurred by the Blue Ribbon Advisory Council on Oysters.

Requested by: Senators Martin of Pitt, Edwards, Representatives Mitchell, Weatherly, Crawford

OCCONEECHEE MOUNTAIN, BIRD ISLAND, HAMMOCKS BEACH STATE PARK LAND ACQUISITION FUNDS

Sec. 26.8D. Notwithstanding G.S. 143-16.3, the Divisions of Parks and Recreation and of Coastal Management of the Department of Environment, Health, and Natural Resources may apply to the Natural Heritage Trust Fund and to other State and federal agencies for funds to acquire Occoneechee Mountain, Bird Island, and additional land at Hammocks Beach State Park.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

GRASSROOTS SCIENCE PROGRAM

Sec. 26.10. Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources for the Grassroots Science Program, the sum of five hundred thousand dollars ($500,000) for fiscal year 1995-96 and the sum of five hundred thousand dollars ($500,000) for fiscal year 1996-97 are allocated as grants-in-aid for each fiscal year as follows:

Catawba Science Center	$50,000
Discovery Place	$50,000
Imagination Station	$50,000
North Carolina Museum of Life and Science	$50,000
Rocky Mount Children's Museum	$50,000
Schiele Museum of Natural History	$50,000
Sci Works Science Center and Environmental Park of Forsyth County	$50,000
Natural Science Center of Greensboro	$50,000
Western North Carolina Nature Center	$15,000
The Health Adventure Museum of Pack Place	

Education, Arts and Science Center, Inc.	$35,000
Cape Fear Museum	$50,000

Requested by: Representatives Mitchell, Weatherly, Crawford, Senators Martin of Pitt, Edwards

SPECIAL ZOO FUND

Sec. 26.11. G.S. 143B-336.1 reads as rewritten:

"§ *143B-336.1. Special Zoo Fund.*

A special continuing and nonreverting fund, to be called the Special Zoo Fund, is created. The North Carolina Zoological Park shall retain unbudgeted receipts at the end of each fiscal year, beginning June 30, 1989, and deposit these receipts into this Fund. This Fund shall be used for maintenance, repairs, and renovations of exhibits in existing habitat clusters and visitor services facilities, construction of visitor services facilities and support facilities such as greenhouses and temporary animal holding areas, and for the replacement of tram equipment as required to maintain adequate service to the public. The Special Zoo Fund may also be used to match private funds which are raised for these purposes. Funds may be expended for these purposes by the Department of Environment, Health, and Natural Resources on the advice of the North Carolina Zoological Park Council and with the approval of the Office of State Budget and Management. The Department of Environment, Health, and Natural Resources shall provide an annual report to the Office of State Budget and Management and to the Fiscal Research Division of the Legislative Services Office on the use of fees collected pursuant to this section."

Requested by: Senators Martin of Pitt, Edwards, Representatives Mitchell, Weatherly, Crawford

RECLASSIFICATION OF EHNR REGIONAL OFFICE MANAGERS

Sec. 26.12. The Department of Environment, Health, and Natural Resources shall reclassify its four regional office management positions as intergovernmental liaison positions. One position shall be located in Mooresville, one shall be located in Washington, one shall be located in Fayetteville, and one shall be located in Asheville. Each person assigned to fill a position must reside in the area in which the position is located.

PART 27. DEPARTMENT OF LABOR

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

ELEVATOR DIVISION SELF-SUPPORTING

Sec. 27. The Department of Labor shall study and make recommendations to the General Assembly on a plan to make the Elevator Division of the Department of Labor self-supporting. The report shall study the corresponding fee increases that will be required for inspection periods of six months, nine months, and twelve months. The report shall also state the corresponding operating costs and personnel requirements, including expansions and reductions of positions, for each inspection period. The Department's plan shall be developed as if it were to be implemented in the

1996-97 fiscal year. The Department shall report to the Joint Legislative Commission on Governmental Operations of the General Assembly on or before April 1, 1996.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt
OSHA POSITIONS

Sec. 27.1. (a) The Department of Labor may use funds appropriated to the Department of Labor for the Occupational Safety and Health Act of North Carolina (OSHANC) program to fully fund enforcement personnel in the Compliance Bureau of the OSHANC program, provided the Department of Labor certifies to the Office of State Budget and Management that no federal match is available for the 1995-96 fiscal year and for the 1996-97 fiscal year.

(b) If federal Occupational Safety and Health Administration funds are granted to match all or part of the funds for enforcement positions and support that are one hundred percent (100%) State-funded, then State funds equivalent to the federal match shall revert to the General Fund at the end of the fiscal year for which the federal match was received.

Requested by: Representative K. Miller, Senator Martin of Pitt
DEPARTMENTAL STUDY OF WORKPLACE RETALIATORY DISCRIMINATION DIVISION OF THE DEPARTMENT OF LABOR

Sec. 27.2. The Department of Labor, the Department of Commerce, and the Employment Security Commission shall jointly undertake a study to determine if the functions of the Workplace Retaliatory Discrimination Division of the Department of Labor can effectively and efficiently be combined with certain related activities of the Employment Security Commission. The study shall include review of federal law pertaining to employment security and retaliatory discrimination to ensure that the combining of these functions would not conflict with pertinent federal law. The Department of Labor shall be the lead agency on this study and shall report the results and recommendations of the study to the Joint Legislative Commission on Governmental Operations by March 1, 1996.

PART 27A. EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom
EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES

Sec. 27A. Notwithstanding any other provision of law, the Early Childhood Education and Development Initiatives, under Part 10B of Article 3 of Chapter 143B of the General Statutes, are subject to the following terms and conditions for the 1995-97 fiscal biennium:

(1) Accountability.

The intent of the General Assembly is to strengthen the accountability of the Department of Human Resources, the North Carolina Partnership for Children, Inc., and the local partnerships

in the expenditure of public funds and achievement of Program goals for the Early Childhood Education and Development Initiatives Program, as authorized under Part 10B of Article 3 of Chapter 143B of the General Statutes. The importance of education as a part of all initiatives in this Program shall be emphasized.

In order to accomplish this level of accountability, the Joint Legislative Commission on Governmental Operations shall, consistent with current law, be the legislative oversight body for the Program. The President Pro Tempore of the Senate and the Speaker of the House of Representatives may appoint a subcommittee of the Joint Legislative Commission on Governmental Operations to carry out this function. This subcommittee may conduct all initial reviews of plans, reports, and budgets relating to the Program and shall make recommendations to the Joint Legislative Commission on Governmental Operations.

a. Existing Partnerships - Local partnerships receiving State funds shall submit a Certification Annual Report on April 1 of each year to the North Carolina Partnership for Children, Inc., the Joint Legislative Commission on Governmental Operations, or any committee designated by Joint Legislative Commission on Governmental Operations. Administrative costs shall be equivalent to, on an average statewide basis for all local partnerships, not more than eight percent (8%) of the total statewide allocation to all local partnerships. Quality incentive grants shall be administered at the partnership level. A definition of administrative costs shall be determined by the independent firm selected under sub-subdivision b. of this subdivision.

b. Program Audit - The Joint Legislative Commission on Governmental Operations shall select an independent firm recognized in performance auditing to conduct an independent performance audit of the first two years of operations of the 24 existing partnerships and of the administration of the Program by the Department of Human Resources. The audit's directives shall be determined by the Joint Legislative Commission on Governmental Operations and the independent firm. An interim program and performance audit report shall be submitted to the Joint Legislative Commission on Governmental Operations by January 1, 1996, and a final program and performance audit report shall be submitted to the Joint Legislative Commission on Governmental Operations by April 1, 1996. A definition of administrative costs shall be determined by the independent firm. Only in-kind contributions that are quantifiable, as determined by the independent firm, may be applied to the in-kind match requirement. The match requirement in subdivision (3) of this section shall be studied by the independent firm and

recommendations for revision, if any, shall be reported to the Joint Legislative Commission on Governmental Operations.

c. The North Carolina Partnership for Children, Inc., shall continue to make quarterly reports to the Joint Legislative Commission on Governmental Operations as provided for in G.S. 143B-168.13(5).

d. New partnerships - In subsequent fiscal biennia, any new local partnership, before receiving State funds, shall be required to submit a detailed plan for expenditure of State funds for appropriate programs to the North Carolina Partnership for Children, Inc., and the Joint Legislative Commission on Governmental Operations for approval in April of the fiscal year in which the local partnership received planning funds. State funds to implement the programs shall not be allocated to the local partnership until the program plan is approved by the North Carolina Partnership for Children, Inc., after consultation with the Joint Legislative Commission on Governmental Operations. After receipt of initial program funds, local partnerships shall then be required to submit annual Certification Reports as provided for in sub-subdivision a. of this subdivision.

e. Contracting for Services - The North Carolina Partnership for Children, Inc., and all local Partnerships shall use competitive bidding practices in contracting for goods and services on all contract amounts of $1,500 and above, and where practicable, for amounts of less than $1,500.

f. Role of North Carolina Partnership for Children, Inc. - The role of the North Carolina Partnership for Children, Inc., shall be expanded to provide technical assistance to local partnerships, assess outcome goals for children and families, ensure that statewide goals and legislative guidelines are being met, help establish policies and outcome measures, obtain non-State resources for early childhood and family services, and document and verify the cumulative contributions received by the partnerships.

(2) Funding.

a. Existing partnerships - All 24 local partnerships that received State funds during the 1993-95 biennium shall receive their State funds proposed for the 1995-96 fiscal year. Existing partnerships shall file budgets and plans for review by the North Carolina Partnership for Children, Inc. Funds for the 1996-97 fiscal year shall be available after the Joint Legislative Commission on Governmental Operations has reviewed the independent evaluation discussed in sub-subdivision (1)b. of this subdivision, and the Partnership has approved these plans and budgets in consultation with the Joint Legislative Commission on Governmental Operations. These 24 partnerships shall be required to submit a

Certification Annual Report as provided in sub-subdivision a. of subdivision (1) of this section, beginning in April 1997.

b. New partnerships - Funds for planning, up to a maximum of $3,500,000, may be made available to the 12 new partnerships in the 1995-96 fiscal year out of the continuation monies designated for the program. If the performance audit report is determined to be satisfactory to the Joint Legislative Commission on Governmental Operations, funding and other recommendations for expansion shall be made to the General Assembly by the Joint Legislative Commission on Governmental Operations for the 1996-97 fiscal year.

c. Department of Human Resources; State-level administrative funding in the 1995-96 fiscal year and the 1996-97 fiscal year - Of the funds appropriated to the Department of Human Resources for Early Childhood Education and Development Initiatives for the 1995-97 fiscal biennium:

1. No funds shall be used for State education technology;
2. The Department of Human Resources shall receive $500,000 for the 1995-96 fiscal year and $250,000 for the 1996-97 fiscal year for State administration;
3. The Joint Legislative Commission on Governmental Operations shall receive $500,000 for the 1995-96 fiscal year for the independent performance audit contract; and
4. Funding for the North Carolina Partnership for Children, Inc., shall be $700,000 for each fiscal year of the biennium.

(3) Matching requirement.

The North Carolina Partnership for Children, Inc., and all local partnerships shall, in the aggregate, be required to match no less than 50% of the total amount budgeted for the Early Childhood Education and Development Initiatives in each fiscal year of the biennium as follows: contributions of cash equal to at least ten percent (10%) and in-kind donated resources equal to no more than ten percent (10%) for a total match requirement of twenty percent (20%) for each fiscal year. Only in-kind contributions that are quantifiable, as determined by the independent auditing firm, shall be applied to the in-kind match requirement.

Failure to obtain a twenty percent (20%) match by May 1 of each fiscal year shall result in a proportionate reduction in the appropriation for the Early Childhood Education and Development Initiatives Program for the next fiscal year. The North Carolina Partnership for Children, Inc., shall be responsible for compiling information on the private cash and in-kind contributions into a report that is submitted to the Joint Legislative Commission on Governmental Operations pursuant to G.S. 143B-168.13(5) in a format that allows verification by the Department of Revenue. The same match requirements shall apply to any expansion funds appropriated by the General Assembly.

Sec. 27A.1. G.S. 143B-168.12(a) reads as rewritten:

"(a) In order to receive State funds, the following conditions shall be met:

(1) Members of the Board of Directors shall consist of the following ~~33~~ 39 members:

a. The Secretary of Human Resources, ex officio;

b. The Secretary of Environment, Health, and Natural Resources, ex officio;

c. The Superintendent of Public Instruction, ex officio;

d. The President of the Department of Community Colleges, ex officio;

e. One resident from each of the 1st, 3rd, 5th, 7th, 9th, and 11th Congressional Districts, appointed by the President Pro Tempore of the Senate;

f. One resident from each of the 2nd, 4th, 6th, 8th, 10th, and 12th Congressional Districts, appointed by the Speaker of the House of Representatives; ~~and~~

g. Seventeen members, of whom four shall be members of the party other than the Governor's party, appointed by the ~~Governor.~~ Governor;

h. The President Pro Tempore of the Senate, or a designee;

i. The Speaker of the House of Representatives, or a designee;

j. The Majority Leader of the Senate, or a designee;

k. The Majority Leader of the House of Representatives, or a designee;

l. The Minority Leader of the Senate, or a designee; and

m. The Minority Leader of the House of Representatives, or a designee.

(2) The North Carolina Partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.

(3) The North Carolina Partnership shall oversee the development and implementation of the local demonstration projects as they are selected."

PART 28. MISCELLANEOUS PROVISIONS

Requested by: Representatives Holmes, Creech, Esposito, Senators Odom, Plyler, Perdue

EFFECT OF HEADINGS

Sec. 28. The headings to the Parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Requested by: Representatives Holmes, Creech, Esposito, Senators Odom, Plyler, Perdue

EXECUTIVE BUDGET ACT REFERENCE

Sec. 28.1. The provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

Requested by: Representatives Holmes, Creech, Esposito, Senators Odom, Plyler, Perdue

CONFERENCE REPORT

Sec. 28.2. (a) The House and Senate Conference Report on the Continuation Budget, dated June 21, 1995, which was distributed in the House and Senate and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in G.S. 143-15 of the Executive Budget Act, and for these purposes shall be considered a part of this act.

(b) The budget enacted by the General Assembly for the maintenance of the various departments, institutions, and other spending agencies of the State for the 1995-97 fiscal biennium is a line item budget, in accordance with the Budget Code Structure and the State Accounting System Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller. This budget includes the appropriations made from all sources including the General Fund, Highway Fund, special funds, cash balances, federal receipts, and departmental receipts.

The General Assembly amended the itemized budget requests submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission, in accordance with the steps that follow and the line item detail in the budget enacted by the General Assembly may be derived accordingly:

(1) Negative reserves set out in the submitted budget were deleted and the totals were increased accordingly.

(2) The base budget was adjusted in accordance with the base budget cuts and additions that were set out in the House and Senate Conference Report on the Continuation Budget, dated May 31, 1995.

(3) Transfers of funds supporting programs were made in accordance with the House and Senate Conference Report on the Continuation Budget, dated June 21, 1995.

The budget enacted by the General Assembly shall also be interpreted in accordance with the special provisions in this act and in accordance with other appropriate legislation.

In the event that there is a conflict between the line item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

(c) The base budget reductions set out in the House and Senate Conference Report on the Continuation Budget, dated June 21, 1995, and in this act that cannot be implemented unless House Bill 994 of the 1995 General Assembly is enacted by the 1995 General Assembly shall not become effective unless, or to the extent, that this bill is enacted making the statutory changes necessary to implement the reductions. If and to the

extent that this bill making the statutory changes necessary to implement the reductions is not enacted by the 1995 General Assembly, the reductions shall not become effective and the General Fund appropriations to the corresponding departments for the corresponding purposes are hereby increased accordingly.

Requested by: Representatives Holmes, Creech, Esposito, Senators Odom, Plyler, Perdue

MOST TEXT APPLIES ONLY TO 1995-97

Sec. 28.3. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium.

Requested by: Representatives Holmes, Creech, Esposito, Senators Odom, Plyler, Perdue

SEVERABILITY CLAUSE

Sec. 28.4. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Requested by: Representatives Holmes, Creech, Esposito, Senators Odom, Plyler, Perdue

EFFECTIVE DATE

Sec. 28.5. Except as otherwise provided, this act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 26th day of June, 1995.

S.B. 664 **CHAPTER 325**

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF PLYMOUTH.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Plymouth is revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF PLYMOUTH.

"ARTICLE I. INCORPORATION, CORPORATE POWERS AND BOUNDARIES.

"Section 1.1. *Incorporation.* The Town of Plymouth, North Carolina in Washington County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'Town of Plymouth', hereinafter at times referred to as the 'Town'.

"Sec. 1.2. *Powers.* The Town shall have and may exercise all of the powers, duties, rights, privileges and immunities conferred upon the Town of Plymouth specifically by this Charter or upon municipal corporations by

general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Sec. 1.3. *Corporate Limits.* The corporate limits shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current municipal boundaries and the boundaries of the wards therein, shall be maintained permanently in the office of the Town Clerk and shall be available for public inspection. Upon alteration of the corporate limits or wards pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the office of the Secretary of State, the Washington County Register of Deeds and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Sec. 2.1. *Town Governing Body; Composition.* The Mayor and the Town Council, hereinafter referred to as the 'Council', shall be the governing body of the Town.

"Sec. 2.2. *Town Council; Composition; Terms of Office.* The Council shall be composed of six members who shall each be elected for terms of two years or until their successors are elected and qualified.

"Sec. 2.3. *Mayor; Term of Office; Duties.* The Mayor shall be elected for a term of two years or until his or her successor is elected and qualified. The Mayor shall be the official head of the Town government and preside at meetings of the Council, shall have the right to vote only when there is an equal division on any question or matter before the Council, and shall exercise the powers and duties conferred by law or as directed by the Council.

"Sec. 2.4. *Mayor Pro Tempore.* The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during his or her absence or disability, in accordance with general law. Alternatively and notwithstanding the provisions of general law, the Council may elect to have the Mayor appoint one of the Council members to act as Mayor Pro Tempore. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the Council.

"Sec. 2.5. *Meetings.* In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Sec. 2.6. *Voting Requirements; Quorum.* Official actions of the Council and all votes shall be taken in accordance with the applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"Sec. 2.7. *Compensation; Qualifications for Office; Vacancies.* The compensation and qualifications of the Mayor and Council members shall be in accordance with general law. Vacancies shall be filled by appointment of the Council as provided by general law.

"ARTICLE III. ELECTIONS.

"Sec. 3.1. *Regular Municipal Elections.* A regular municipal election shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on

a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Sec. 3.2. *Ward Boundaries.* The Town shall be divided into three wards. The ward boundaries are those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with general law.

"Sec. 3.3. *Election of Governing Body.* Six Council members and a Mayor shall be elected in each regular municipal election. The qualified voters of the Town voting at large shall elect a Mayor, and shall elect two Council members from each of the three wards, all to serve for terms of two years, or until their successors are elected and qualified. In each election, the candidate for Mayor who receives the largest number of votes cast for Mayor shall be declared elected, and the two candidates for Council member from each ward who receive the highest number of votes cast for candidates who reside in the ward wherein they reside shall be declared elected.

"Sec. 3.4. *Special Elections and Referenda.* Special elections and referenda may be held only as provided by general law or by applicable local acts of the General Assembly.

"ARTICLE IV. TOWN MANAGER.

"Sec. 4.1. *Form of Government.* The Town shall operate under the council-manager form of government, in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 4.2. *Town Manager; Appointment; Powers and Duties.* The Council shall appoint a Town Manager who shall be the administrative head of the Town government responsible for the administration of all departments. The Town Manager shall be appointed with regard to merit only. The Town Manager shall hold office at the pleasure of the Council and shall receive such compensation as it shall fix by ordinance. The Town Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Council, so far as authorized by general law.

"ARTICLE V. ADMINISTRATIVE OFFICERS AND EMPLOYEES.

"Sec. 5.1. *Town Attorney.* The Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, to advise Town officials and to perform other duties required by law or as the Council may direct.

"Sec. 5.2. *Town Clerk.* The Town Manager shall appoint a Town Clerk to keep a journal of the proceedings of the Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Manager may direct.

"Sec. 5.3. *Tax Collector.* The Town shall have a Tax Collector to collect all taxes owed to the Town and perform those duties specified in G.S. 105-350 and such other duties as prescribed by law or assigned by the Town Manager. Notwithstanding the contrary provisions of G.S. 105-349, the Manager may appoint and remove the Tax Collector and one or more Assistant Tax Collectors.

"Sec. 5.4. *Other Administrative Officers and Employees.* The Council may authorize other positions to be filled by appointment by the Town Manager, and may organize the Town government as deemed appropriate, subject to

the requirements of general law. All appointments and removals made by the Town Manager shall be reported to the governing body at the next meeting thereof following such appointments and removals.

"ARTICLE VI. POLICE.

"Sec. 6.1. *Police Jurisdiction.* The Town police force shall have extraterritorial jurisdiction as provided by G.S. 160A-286 and as provided by Section 2 of Chapter 93 of the Session Laws of 1965.

"ARTICLE VII. EXTRATERRITORIAL JURISDICTION.

"Sec. 7.1. *Extraterritorial Jurisdiction.* The Town in exercising the extraterritorial zoning authority granted under G.S. 160A-360 is prohibited from exercising such authority over any territory located outside the boundaries of Washington County, as specified by Chapter 450 of the Session Laws of 1965."

Sec. 2. The purpose of this act is to revise the Charter of the Town of Plymouth and to consolidate certain acts concerning the property, affairs and government of the Town. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Sec. 3. This act does not repeal or affect any acts concerning the property, affairs or government of public schools, or any acts validating official actions, proceedings, contracts, or obligations of any kind.

Sec. 4. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 48, Laws of 1807
Chapter 54, Laws of 1810
Chapter 56, Laws of 1813
Chapter 60, Private Acts of 1821
Chapter 110, Private Acts of 1825
Chapter 315, Private Acts of 1850-51
Chapter 121, Private Laws of 1856-57
Chapter 62, Private Laws of 1881
Chapter 79, Private Laws of 1889
Chapter 339, Private Laws of 1891
Chapter 269, Private Laws of 1895
Chapter 213, Private Laws of 1903
Chapter 20, Private Laws of 1911, Sections 5-9
Chapter 16, Private Laws of 1915, except for Section 1
Chapter 186, Public-Local Laws of 1939
Chapter 215, Public-Local Laws of 1941
Chapter 624, Session Laws of 1947
Chapter 25, Session Laws of 1949
Chapter 195, Session Laws of 1949
Chapter 233, Session Laws of 1951
Chapter 766, Session Laws of 1953
Chapter 79, Session Laws of 1957
Chapter 1127, Session Laws of 1957
Chapter 449, Session Laws of 1965

Chapter 203, Session Laws of 1967, except for Section 3
Chapter 251, Session Laws of 1969
Chapter 187, Session Laws of 1973.

Sec. 5. The Mayor and Council members serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified. Thereafter those offices shall be filled as provided in Articles II and III of the Charter contained in Section 1 of this act.

Sec. 6. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Sec. 7. All existing ordinances, resolutions, and other provisions of the Town of Plymouth not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Sec. 8. No action or proceeding pending on the effective date of this act by or against the Town or any of its departments or agencies shall be abated or otherwise affected by this act.

Sec. 9. If any provision of this act or application thereof is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 10. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1995.

H.B. 108 **CHAPTER 326**

AN ACT TO PROVIDE SPECIALIZED REGISTRATION PLATES FOR RETIRED CLERKS OF SUPERIOR COURT AND FOR SUPPORTERS OF PROFESSIONAL SPORTS TEAMS AND TO LIMIT AMERICAN LEGION SPECIALIZED REGISTRATION PLATES TO MEMBERS OF THE AMERICAN LEGION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b)(5) reads as rewritten:

"(5) Clerk of Superior Court. -- Issuable to a current or retired clerk of superior court. ~~The~~ A plate issued to a current clerk shall bear the phrase 'Clerk Superior Court' and the letter 'C' followed by a number that indicates the county the clerk serves. A plate issued to a retired clerk shall bear the phrase 'Clerk Superior Court, Retired', the letter 'C' followed by a number that indicates the county the clerk served, and the letter 'X' indicating the clerk's retired status."

Sec. 2. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(21a) Professional Sports Fan. -- Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of a professional sports team located in North Carolina. The Division shall receive 300 or more applications for a professional sports fan plate before a plate may be issued. The Division shall not develop a professional sports fan plate unless the professional sports team licenses, without charge, the State to use the official team logo on the plate."

Sec. 3. G.S. 20-79.4(b)(2a) reads as rewritten:

"(2a) American Legion. -- Issuable to a member ~~or a supporter~~ of the American Legion. The plate shall bear the words 'American Legion' and the emblem of the American Legion. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1995.

H.B. 708

CHAPTER 327

AN ACT TO AMEND THE GENERAL STATUTES TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO ELECTRONICALLY MONITOR AND RECORD COMPLIANCE DATA OFF-SITE FROM SPECIAL PURPOSE COMMERCIAL HAZARDOUS WASTE FACILITIES THAT USE HAZARDOUS WASTE AS A FUEL AND TO CLARIFY THE CIRCUMSTANCES UNDER WHICH A PRIVATE ENVIRONMENTAL CONSULTING OR ENGINEERING FIRM MAY BE EMPLOYED TO IMPLEMENT AND OVERSEE A VOLUNTARY REMEDIAL ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-295.02(j) reads as rewritten:

"(j) For purposes of this subsection, special purpose commercial hazardous waste facilities include: a facility that manages limited quantities of hazardous waste; a facility that limits its hazardous waste management activities to reclamation or recycling, including energy or materials recovery or a facility that stores hazardous waste primarily for use at such facilities; or a facility that is determined to be low risk under rules adopted by the Commission pursuant to this subsection. The Commission shall adopt rules establishing reasonable times and frequencies for the presence of a resident inspector on less than a full-time basis at special purpose commercial hazardous waste facilities. Rules adopted pursuant to this subsection shall establish classifications of special purpose hazardous waste facilities based on factors including, but not limited to, the size of the facility, the type of treatment or storage being performed, the nature and volume of waste being treated or stored, the uniformity, similarity, or lack of diversity of the waste streams, the predictability of the nature of the waste streams and their

treatability, whether the facility utilizes automated monitoring or safety devices that adequately perform functions that would otherwise be performed by a resident inspector, the fact that reclamation or recycling is being performed at the facility, and the compliance history of the facility and its operator. Special purpose commercial hazardous waste facilities shall be subject to inspection at all times during which the facility is in operation, undergoing any maintenance or repair, or undergoing any test or calibration. Rules adopted pursuant to this subsection shall specify a minimum number of inspections during such times as the facility is subject to inspection. Special purpose commercial hazardous waste facilities that utilize hazardous waste as a fuel source shall be inspected a minimum of 40 hours per ~~week.~~ week, unless compliance data for these facilities can be electronically monitored and recorded off-site by the Department. The Department, considering the benefits provided by electronic monitoring, shall determine the number of hours of on-site inspection required at these facilities. The Department shall maintain records of all inspections at special purpose commercial hazardous waste facilities. Such records shall contain sufficient detail and shall be arranged in a readily understandable format so as to facilitate determination at any time as to whether the special purpose commercial hazardous waste facility is in compliance with the requirements of this subsection and of rules adopted pursuant to this subsection."

Sec. 2. G.S. 130A-310.9(c) reads as rewritten:

"(c) The Department may ~~select and hire~~ approve a private environmental consulting and engineering ~~firms~~ firm to implement and oversee a voluntary remedial ~~actions by owners, operators, or other responsible parties.~~ action by an owner, operator, or other responsible party. An owner, operator, or other responsible party ~~that chooses to use~~ who enters into an agreement with the Secretary to implement a voluntary remedial action may hire a private environmental consulting or engineering firm ~~shall reimburse the Department for the cost of all work performed by the firm.~~ approved by the Department to implement and oversee the voluntary remedial action. A voluntary remedial action that is implemented and overseen by a private environmental consulting or engineering firm shall be implemented in accordance with all federal and State laws, regulations, and rules that apply to remedial actions generally and is subject to rules adopted pursuant to G.S. 130A-310.12(b). The Department may revoke its approval of the oversight of a voluntary remedial action by a private environmental consulting or engineering firm and assume direct oversight of the voluntary remedial action whenever it appears to the Department that the voluntary remedial action is not being properly implemented or is not being adequately overseen. The Department may require the owner, operator, other responsible party, or private environmental consulting or engineering firm to take any action necessary to bring the voluntary remedial action into compliance with applicable requirements."

Sec. 3. G.S. 130A-310.12(b) reads as rewritten:

"(b) The Commission shall adopt rules governing the selection and use of private environmental ~~engineering and~~ consulting and engineering firms to implement and oversee voluntary remedial actions by owners, operators,

or other responsible parties under G.S. 130A-310.9(c). Rules adopted under this subsection shall specify:

(1) Standards applicable to private environmental consulting and engineering firms.

(2) ~~Procedures for identifying and choosing firms.~~ Criteria and procedures for approval of firms by the Department.

(3) ~~Standards and procedures governing charges by private environmental consulting and engineering firms and the reimbursement of those charges.~~ Requirements and procedures under which the Department monitors and audits a voluntary remedial action to ensure that the voluntary remedial action complies with applicable federal and State law, regulations, and under which the owner, operator, or other responsible party reimburses the Department for the cost of monitoring and auditing the voluntary remedial action.

(4) ~~Financial~~ Any financial assurances ~~to~~ that may be required of an owner, operator, or other responsible ~~party that chooses to implement a voluntary remedial action under G.S. 130A-310.9(c).~~ party.

(5) Requirements for the preparation, maintenance, and public availability of work plans and records, reports of data collection including sampling, sample analysis, and other site testing, and other records and reports that are consistent with the requirements applicable to remedial actions generally."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1995.

S.B. 379

CHAPTER 328

AN ACT RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON THE JUVENILE CODE TO ALLOW COURTS TO ORDER PSYCHIATRIC OR PSYCHOLOGICAL TREATMENT OF PARENTS OF JUVENILES ADJUDICATED DELINQUENT, UNDISCIPLINED, ABUSED, NEGLECTED, OR DEPENDENT AT THE DISPOSITIONAL HEARINGS OR SUBSEQUENT HEARINGS AND TO PROVIDE FOR NOTICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-564 reads as rewritten:

"*§ 7A-564. Issuance of summons.*

(a) Immediately after a petition has been filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent, the clerk shall issue a summons to the juvenile, to the parent, and to the guardian, custodian, or caretaker requiring them to appear for a hearing at the time and place stated in the summons. A copy of the petition shall be attached to each summons.

(b) A summons shall be on a printed form supplied by the Administrative Office of the Courts and shall include:

(1) Notice of the nature of the proceeding;

(2) Notice of any right to counsel and information about how to seek the appointment of counsel prior to a hearing; ~~and~~

(3) Notice that, if the court determines at the hearing that the allegations of the petition are true, the court will conduct a dispositional hearing to consider the needs of the juvenile and enter an order designed to meet those needs and the objectives of the ~~State, and that the dispositional order may remove the juvenile from the custody of the parent, guardian, or custodian.~~ State; and

(4) Notice that the dispositional order or a subsequent order:

a. May remove the juvenile from the custody of the parent, guardian, or custodian.

b. May require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment.

c. May require the parent to undergo psychiatric, psychological, or other treatment or counseling for the purpose of remedying the behaviors or conditions that are alleged in the petition or that contributed to the removal of the juvenile from the custody of the parent.

d. May order the parent to pay for treatment that is ordered for the juvenile or the parent.

(c) The summons shall advise the parent that upon service, jurisdiction over ~~him~~ the parent is obtained and that failure of the parent to comply with any order of the court pursuant to G.S. 7A-650 may cause the court to issue a show cause order for contempt.

(d) A summons shall be directed to the person summoned to appear and shall be delivered to any person authorized to serve process."

Sec. 2. G.S. 7A-650 reads as rewritten:

"*§ 7A-650. Authority over parents of juvenile adjudicated as delinquent, undisciplined, abused, neglected, or dependent.*

(a) If the ~~judge~~ court orders medical, surgical, psychiatric, psychological, or other treatment pursuant to G.S. 7A-647(3), the ~~judge~~ court may order the parent or other responsible parties to pay the cost of the treatment or care ordered.

(b) The ~~judge~~ court may order the parent to provide transportation for a juvenile to keep an appointment with a court counselor.

(b1) ~~In any case where a juvenile has been adjudicated as delinquent, undisciplined, abused, neglected or dependent, the judge may conduct a special hearing to determine if the court should order the parents to participate in medical, psychiatric, psychological or other treatment and pay the costs thereof. The notice of this hearing shall be by special petition and summons to be filed by the court and served upon the parents at the conclusion of the adjudication hearing. If, at this hearing, the court finds it in the best interest of the juvenile for the parent to be directly involved in treatment, the judge may order the parent to participate in medical, psychiatric, psychological or other treatment.~~

At the dispositional hearing or a subsequent hearing in the case of a juvenile who has been adjudicated delinquent, undisciplined, abused, neglected, or dependent, if the court finds that it is in the best interest of the juvenile for the parent to be directly involved in the juvenile's treatment, the court may order the parent to participate in medical, psychiatric, psychological, or other treatment of the juvenile and to pay the costs thereof. If the court finds that the parent is unable to pay the cost of the treatment, the court may charge the cost to the county of the juvenile's residence.

(b2) ~~At any hearing conducted pursuant to subsection (b1) of this section or at a separate hearing set for this purpose, the court may consider whether the best interest of a juvenile who has been removed from the custody of his parent requires that legal custody or physical placement of the juvenile with the parent be conditioned upon the parent undergoing medical, psychiatric, psychological, or other treatment directed toward remediating or remedying those behaviors or conditions that led to or contributed to removal of the child, and paying the cost of that treatment. The notice of hearing in such case shall be by special petition and summons to be filed with the court and served upon the parent at the conclusion of the adjudication hearing. The notice may be combined with a notice given under subsection (b1) of this section. If, at the hearing, the court determines that the best interest of the juvenile requires that the parent undergo such treatment, it may enter an order conditioning legal custody or physical placement of the juvenile with the parent upon compliance with a plan of treatment approved by the court and order the parent to pay the cost of the treatment. If the judge finds the parent is unable to pay the cost of the treatment, the judge may charge the cost to the county. The special hearing required by this subsection may be combined with the dispositional hearing as long as the notice required by this subsection is given.~~

At the dispositional hearing or a subsequent hearing in the case of a juvenile who has been adjudicated delinquent, undisciplined, abused, neglected, or dependent, the court may determine whether the best interest of the juvenile requires that the parent undergo psychiatric, psychological, or other treatment or counseling directed toward remediating or remedying behaviors or conditions that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent. If the court finds that the best interest of the juvenile requires the parent undergo treatment, it may order the parent to comply with a plan of treatment approved by the court or condition legal custody or physical placement of the juvenile with the parent upon the parent's compliance with the plan of treatment. The court may order the parent to pay the cost of treatment ordered pursuant to this subsection. In cases in which the court has conditioned legal custody or physical placement of the juvenile with the parent upon the parent's compliance with a plan of treatment, the court may charge the cost of the treatment to the county of the juvenile's residence if the court finds the parent is unable to pay the cost of the treatment. In all other cases, if the court finds the parent is unable to pay the cost of the treatment ordered pursuant to this subsection, the court may order the parent to receive treatment currently available from the area mental health program that serves the parent's catchment area.

(c) Whenever legal custody of a juvenile is vested in someone other than ~~his~~ the juvenile's parent, after due notice to the parent and after a hearing, the ~~judge~~ court may order that the parent pay a reasonable sum that will cover in whole or in part the support of the juvenile after the order is entered. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c). If the ~~judge~~ court places a juvenile in the custody of a county department of social services and if the ~~judge~~ court finds that the parent is unable to pay the cost of the support required by the juvenile, the cost shall be paid by the county department of social services in whose custody the juvenile is placed, provided the juvenile is not receiving care in an institution owned or operated by the State or federal government or any subdivision thereof.

(d) Failure of a parent who is personally served to participate in or comply with subsections (a) through (c) may result in a civil proceeding for contempt."

Sec. 3. G.S. 7A-523 reads as rewritten:

"§ *7A-523. Jurisdiction.*

(a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be delinquent, undisciplined, abused, neglected, or dependent. This jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect. For purposes of determining jurisdiction, the age of the juvenile either at the time of the alleged offense or when the conditions causing the juvenile to be abused, neglected, or dependent arose, governs. There is no minimum age for juveniles alleged to be abused, dependent or neglected. For juveniles alleged to be delinquent or undisciplined, the minimum age is six years of age.

The court also has exclusive original jurisdiction of the following proceedings:

(1) Proceedings under the Interstate Compact on Juveniles and the Interstate Parole and Probation Hearing Procedures for Juveniles;

(2) Proceedings to determine whether a juvenile who is on conditional release and under the aftercare supervision of the court counselor has violated the terms of his conditional release established by the Division of Youth Services;

(3) Proceedings involving judicial consent for emergency surgical or medical treatment for a juvenile when his parent, guardian, legal custodian, or other person standing *in loco parentis* refuses to consent for treatment to be rendered;

(4) Proceedings to determine whether a juvenile should be emancipated;

(5) Proceedings to terminate parental rights;

(6) Proceedings to review the placement of a juvenile in foster care pursuant to an agreement between the juvenile's parents or guardian and a county department of social services;

(7) Proceedings in which a person is alleged to have obstructed or interfered with an investigation required by G.S. 7A-544.

(b) The court shall have jurisdiction over the parent of a juvenile who has been adjudicated delinquent, undisciplined, abused, neglected or dependent, as provided by ~~the special hearing prescribed by G.S. 7A-650,~~

~~provided the parent has been properly served with notice of the special hearing.~~ G.S. 7A-564, provided the parent has been properly served with notice pursuant to G.S. 7A-564."

Sec. 4. This act becomes effective October 1, 1995, and applies to petitions filed on or after that date.

In the General Assembly read three times and ratified this the 26th day of June, 1995.

S.B. 496

CHAPTER 329

AN ACT TO ALLOW LOCAL GOVERNMENTS TO FORGO COLLECTION OF AD VALOREM TAX BILLS WHEN THE ORIGINAL PRINCIPAL AMOUNT DUE IS UNDER FIVE DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-321 is amended by adding a new subsection to read:

"(f) Minimal Taxes. -- Notwithstanding the provisions of G.S. 105-380, the governing body of a taxing unit that collects its own taxes may, by resolution, direct its assessor and tax collector not to collect minimal taxes charged on the tax records and receipts. Minimal taxes are the combined taxes and fees of the taxing unit and any other units for which it collects taxes, due on a tax receipt prepared pursuant to G.S. 105-320 or on a tax notice prepared pursuant to G.S. 105-330.5, in a total original principal amount that does not exceed an amount, up to five dollars ($5.00), set by the governing body. The amount set by the governing body should be the estimated cost to the taxing unit of billing the taxpayer for the amounts due on a tax receipt or tax notice. Upon adoption of a resolution pursuant to this subsection, the tax collector shall not bill the taxpayer for, or otherwise collect, minimal taxes but shall keep a record of all minimal taxes by receipt number and amount and shall make a report of the amount of these taxes to the governing body at the time of the settlement. These minimal taxes shall not be a lien on the taxpayer's real property and shall not be collectible under Article 26 of this Subchapter. A resolution adopted pursuant to this subsection must be adopted on or before June 15 preceding the first taxable year to which it applies and remains in effect until amended or repealed by resolution of the taxing unit."

Sec. 2. Chapter 24 of the 1995 Session Laws is repealed. A resolution adopted under G.S. 105-330.5(b1), as enacted by Chapter 24 of the 1995 Session Laws, prior to the effective date of this act will be considered a resolution adopted under G.S. 105-321(f) as enacted by this act.

Sec. 3. This act is effective for taxes imposed for taxable years beginning on or after July 1, 1995. Notwithstanding G.S. 105-321(f), as enacted by this act, a resolution on minimal property taxes adopted on or before June 30, 1995, applies to the 1995-96 taxable year.

In the General Assembly read three times and ratified this the 26th day of June, 1995.

H.B. 416 **CHAPTER 330**

AN ACT TO CLARIFY THAT IMMUNITY FROM LIABILITY FOR AGENCIES SUPERVISING COMMUNITY SERVICE WORK INCLUDES CLAIMS FROM PERSONS WORKING UNDER A DEFERRED PROSECUTION AGREEMENT, PERSONS ON PROBATION AND PERSONS ON PAROLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1342(j) reads as rewritten:

"(j) Immunity for Injury to Defendant Performing Community Service. -- ~~A person is not liable for damages for any injury or loss sustained by a defendant performing community or reparation service unless the injury is caused by the person's gross negligence or intentional wrongdoing. As used in this subsection, "person" includes any governmental unit or agency, nonprofit corporation, or other nonprofit agency that is supervising the defendant or for whom the defendant is performing community service work, as well as any person employed by the agency or corporation while acting in the scope and course of his employment. This subsection does not affect the immunity from civil liability in tort available to local governmental units or agencies. Notice of the provisions of this subsection must be furnished to the defendant at the time he is served with a copy of the probation judgment or deferred prosecution order.~~ Immunity from liability for injury to a defendant performing community service shall be as set forth in G.S. 143B-475.1(d)."

Sec. 2. G.S. 143B-475.1 is amended by adding a new subsection to read:

"(d) A person is not liable for damages for any injury or loss sustained by an individual performing community or reparation service under this section unless the injury is caused by the person's gross negligence or intentional wrongdoing. As used in this subsection, 'person' includes any governmental unit or agency, nonprofit corporation, or other nonprofit agency that is supervising the individual, or for whom the individual is performing community service work, as well as any person employed by the agency or corporation while acting in the scope and course of the person's employment. This subsection does not affect the immunity from civil liability in tort available to local governmental units or agencies. Notice of the provisions of this subsection must be furnished to the individual at the time of assignment of community service work by the community service coordinator."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1995.

S.B. 724 **CHAPTER 331**

AN ACT TO DESCRIBE CIRCUMSTANCES UNDER WHICH AN ATTORNEY-IN-FACT MAY MAKE GIFTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-1 reads as rewritten:

"*§ 32A-1. Statutory Short Form of General Power of Attorney.*

The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this Chapter.

'NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

State of .....

County of .....

~~I ....., the undersigned, hereby appoint ..... my attorney-in-fact for me~~ I, ..., appoint ..... to be my attorney-in-fact, ~~and give such person full power~~ to act in my ~~name, place and stead~~ name in any way which I ~~myself could do if I were personally present~~ could act for myself, with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General ~~Statutes to the extent that I am permitted by law to act through an agent.~~ Statutes. (DIRECTIONS: Initial the line opposite any one or more of the subdivisions as to which the principal desires to give the attorney-in-fact authority.)

(1) Real property ~~transactions;~~ transactions _____

(2) Personal property ~~transactions;~~ transactions _____

(3) Bond, share, stock, securities and commodity ~~transactions;~~ transactions _____

(4) Banking ~~transactions;~~ transactions _____

(5) Safe ~~deposits;~~ deposits _____

(6) Business operating ~~transactions;~~ transactions _____

(7) Insurance ~~transactions;~~ transactions _____

(8) Estate ~~transactions;~~ transactions _____

(9) Personal relationships and ~~affairs;~~ affairs _____

(10) Social security and ~~unemployment;~~ unemployment _____

(11) Benefits from ~~military service;~~ military service _____

(12) Tax matters _____

(13) Employment of agents _____

(14) Gifts to charities, and to individuals other than the attorney-in-fact _____

(15) Gifts to the named attorney-in-fact _____

(If power of substitution and revocation is to be given, add: 'I also give to such person full power to appoint another to act as my attorney-in-fact and full power to revoke such appointment.')

(If period of power of attorney is to be limited, add: 'This power terminates ....., ~~19~~.....')

(If power of attorney is to be a durable power of attorney under the provision of Article 2 of Chapter 32A and is to continue in effect after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall not be affected by my subsequent incapacity or mental incompetence.')

(If power of attorney is to take effect only after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall become effective after I become incapacitated or mentally incompetent.')

Dated ....., ~~19~~.....

.....(Seal)

Signature

STATE OF ..... COUNTY OF .....

On this ..... day of ....., ..., personally appeared before me, the said named ..... to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires .....

.....

(Signature of Notary Public)

Notary Public (Official Seal)'".

Sec. 2. G.S. 32A-2(3) reads as rewritten:

"(3) Bond, ~~Share~~ Share, Stock, Securities and Commodity Transactions. -- To request, ask, demand, sue for, recover, collect, receive, and hold and possess any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto together with the interest, dividends, proceeds, or other distributions connected therewith, as now are, or shall hereafter become, owned by, or due, owing payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute, and deliver for the principal, all indorsements, acquittances, releases, receipts, or other sufficient discharges for the same."

Sec. 3. G.S. 32A-2(12) reads as rewritten:

"(12) ~~Tax.~~ Tax matters. -- To prepare, execute, verify and file in the name of the principal and on behalf of the principal any and all types of tax returns, amended returns, declaration of estimated tax, report, protest, application for correction of assessed valuation of real or other property, appeal, brief, claim for refund, or petition, including petition to the Tax Court of the United States, in connection with any tax imposed or proposed to be imposed by any government, or claimed, levied or assessed by any government, and to pay any such tax and to obtain any extension of time for any of the foregoing; to execute waivers or consents agreeing to a later determination and assessment of taxes than is provided by any statute of limitations; to execute waivers of restriction on the assessment and collection of deficiency in any tax; to execute closing agreements and all other documents, instruments and papers relating to any tax liability of any sort; to institute and carry on

through counsel any proceeding in connection with determining or contesting any such tax or to recover any tax paid or to resist any claim for additional tax on any proposed assessment or levy thereof; and to enter into any agreements or stipulations for compromise or other adjustments or disposition of any tax."

Sec. 4. G.S. 32A-2 is amended by adding the following new subdivisions to read:

"(14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact. --

a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual other than the attorney-in-fact or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subdivision 'Internal Revenue Code' means the 'Code' as defined in G.S. 105-2.1.

b. Except as provided in G.S. 32A-2(14)c., a power described in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or creditors of the estate of the attorney-in-fact.

c. If the power described in G.S. 32A-2(14)a. is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by G.S. 32A-2(14)b. from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact.

d. An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request the clerk of the superior court to issue an order to make a gift of the property of the principal.

(15) Gifts to the Named Attorney-In-Fact. -- To make gifts to the attorney-in-fact named in the power of attorney or the estate, creditors, or creditors of the estate of the attorney-in-fact."

Sec. 5. Chapter 32A of the General Statutes is amended by adding the following new Articles to read:

"ARTICLE 2A.

"Authority of Attorney-In-Fact to Make Gifts.

"§ *32A-14.1. Gifts under power of attorney.*

(a) Except as provided in subsection (b) of this section, if any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, the attorney-in-fact shall have the power and authority to make gifts in any amount of any of the principal's property to any individual or to any organization described in sections 170(c) and 2422(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making

or joining in the making of lifetime gifts. As used in this subsection, 'Internal Revenue Code' means the 'Code' as defined in G.S. 105-2.1.

(b) Except as provided in subsection (c) of this section, or unless gifts are expressly authorized by the power of attorney, a power described in subsection (a) of this section may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact.

(c) If the power of attorney described in subsection (a) of this section is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by subsection (b) of this section from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact. If the power of attorney described in subsection (a) of this section is conferred upon one attorney-in-fact, the power of attorney may be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact pursuant to an order issued by the clerk in accordance with the procedures and provisions of Article 2B of this Chapter.

(d) Subsection (a) of this section shall not in any way impair the right, power, or ability of any principal, by express terms in the power of attorney, to authorize or limit the authority of any attorney-in-fact to make gifts of the principal's property.

(e) An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request that the clerk of the superior court issue an order approving a gift or gifts of the property of the principal.

(f) This section shall apply to all powers of attorney executed prior to, on, or after the effective date of this section.

"ARTICLE 2B.

"Gifts Authorized by Court Order.

"*§ 32A-14.10. Gifts authorized by court order.*

An attorney-in-fact, acting under a power of attorney that does not contain the grant of power set out in G.S. 32A-14.1 and does not expressly authorize gifts of the principal's property, may initiate a special proceeding before the clerk of superior court in accordance with the procedures of Article 33 of Chapter 1 of the General Statutes for authority to make gifts of the principal's property to the extent not inconsistent with the express terms of the power of attorney. The principal and any guardian ad litem appointed for the principal are the defendants in a proceeding pursuant to this Article. The clerk may issue an order setting forth the amounts, frequency, recipients, and proportions of any gifts of the principal's property after considering all relevant factors, including, but not limited to: (i) the size of the principal's estate; (ii) the principal's foreseeable obligations; (iii) the principal's foreseeable maintenance needs; (iv) the principal's personal history of making or joining in the making of lifetime gifts; (v) the principal's estate plan; and (vi) the tax effects of the gifts. If there is no appeal from the decision and order of the clerk within the time prescribed by law, the clerk's order shall be submitted to the judge of the superior court and approved by the court before the order becomes effective.

"*§ 32A-14.11. Appeal; stay effected by appeal.*

Any party in interest may appeal from the decision of the clerk to the judge of the superior court. The procedure for appeal shall be the same as the procedure for appeal in other special proceedings governed by Article 33 of Chapter 1 of the General Statutes. An appeal taken from the decision of the clerk shall stay the decision and order of the clerk until the cause is heard and determined by the judge upon the appeal taken.

"*§ 32A-14.12. Costs and fees.*

All costs and fees arising in connection with a proceeding under this Article shall be assessed the same as costs and fees are assessed in special proceedings governed by Article 33 of Chapter 1 of the General Statutes."

Sec. 6. Nothing in this act is intended to alter or otherwise affect the law of this State with regard to presumptions of fraud or fiduciary responsibilities.

Sec. 7. Article 2A of Chapter 32A as set out in Section 3 of this act is intended as a codification of the existing North Carolina common law.

Sec. 8. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 27th day of June, 1995.

S.B. 331 **CHAPTER 332**

AN ACT TO PROVIDE A LIMITED TOLERANCE FOR EXISTING TRUCK WEIGHTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-118(h) reads as rewritten:

"(h) Tolerance. -- A vehicle may exceed maximum and the inner axle-group weight limitations set forth in subdivision (b)(3) of this section by a tolerance of ten percent (10%). This exception does not authorize a vehicle to exceed either the single-axle or tandem-axle weight limitations set forth in subdivisions (b)(1) and (b)(2) of this section, or the maximum gross weight limit of 80,000 pounds. This exception does not apply to bridges posted under G.S. 136-72 or to vehicles operating on interstate highways. The tolerance allowed under this subsection does not authorize the weight of a vehicle to exceed the weight for which that vehicle is licensed under G.S. 20-88. No tolerance on the single-axle ~~weight, the tandem-axle weight, or axle-group weight~~ weight or the tandem-axle weight provided for in ~~G.S. 20-118(b)~~ subdivisions (b)(1) and (b)(2) of this section shall be granted administratively or otherwise. The Department of Transportation shall report back to the Transportation Oversight Committee and to the General Assembly on the effects of the tolerance granted under this section, any abuses of this tolerance, and any suggested revisions to this section by that Department on or before May 1, 1998."

Sec. 2. G.S. 20-118(e) reads as rewritten:

"(e) Penalties. --

(1) Except as provided in subdivision (2) of this subsection, for each violation of the single-axle or tandem-axle weight limits set in subdivision (b)(1), (b)(2), or (b)(4) of this section, the Department of Transportation shall assess a civil penalty against the owner or

registrant of the vehicle in accordance with the following schedule: for the first 1,000 pounds or any part thereof, four cents (4¢) per pound; for the next 1,000 pounds or any part thereof, six cents (6¢) per pound; and for each additional pound, ten cents (10¢) per pound. These penalties apply separately to each weight limit violated. In all cases of violation of the weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted.

(2) The penalty for a violation of the single-axle or tandem-axle weight limits by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (1) of this subsection.

(3) ~~Except as provided in subdivision (4) of this subsection, for a violation of an axle-group weight limit set in subdivision (b)(3) of this section, the Department of Transportation shall assess a civil penalty against the owner or registrant of the motor vehicle in accordance with the following schedule: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. These penalties apply separately to each axle-group weight limit violated. The penalty shall be assessed on each pound of weight in excess of the maximum permitted.~~

If an axle-group weight of a vehicle exceeds the weight limit set in subdivision (b)(3) of this section plus any tolerance allowed in subsection (h) of this section, the Department of Transportation shall assess a civil penalty against the owner or registrant of the motor vehicle. The penalty shall be assessed on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3), as follows: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed in subsection (h) of this section. These penalties apply separately to each axle-group weight limit violated.

(4) The penalty for a violation of an axle-group weight limit by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (3) of this subsection.

(5) A violation of a weight limit in this section is not punishable under G.S. 20-176."

Sec. 3. The heading to the table of maximum weights included in G.S. 20-118(b)(3) reads as rewritten:

"Maximum Weight in Pounds for any Group of Two or More Consecutive Axles ~~Including all Tolerances~~".

Sec. 4. Section 3 of Chapter 109 of the 1995 Session Laws is repealed.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1995.

H.B. 231 **CHAPTER 333**

AN ACT TO REQUEST THE SUPREME COURT TO ADOPT A PLAN TO ADMINISTER JUSTICE WITHOUT DELAY IN NORTH CAROLINA TRIAL COURTS.

The General Assembly of North Carolina enacts:

Section 1. The North Carolina Supreme Court is requested to develop and implement a case flow management plan designed to avoid delay and unnecessary appearances and to increase efficiency in the handling of cases in North Carolina's trial courts. The plan should:

(1) Place responsibility for managing the flow of cases on specific persons;
(2) Adopt case processing standards and goals;
(3) Address the problem of delay;
(4) Avoid unnecessary appearances in court by parties, witnesses, and attorneys;
(5) Provide mechanisms for keeping continuous control of cases;
(6) Establish definite deadlines throughout the process;
(7) Include a limited continuance policy;
(8) Consider the interests of victims and witnesses;
(9) Set out accountability mechanisms; and
(10) Provide for training of those persons responsible for managing the case flow.

Sec. 2. The Supreme Court is requested to make a report detailing the case flow management plan to the 1995 General Assembly, Regular Session 1996, by May 1, 1996. The report should include the recommended standards and goals; a report of the plan to implement those standards and goals; a timetable for implementation; persons responsible for managing the flow of cases and how they will be held accountable; how the plan is going to be evaluated; what training is necessary; and recommended legislation to facilitate implementation.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1995.

H.B. 487 **CHAPTER 334**

AN ACT TO AUTHORIZE PILOT PROGRAMS IN WHICH STUDENTS ARE REQUIRED TO WEAR UNIFORMS IN PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. The State Board of Education may authorize up to five local school administrative units to implement pilot programs in which students are required to wear uniforms in public schools.

Prior to selecting the pilot units, the State Board of Education shall develop guidelines for local boards of education to use when establishing requirements for students to wear uniforms in public schools. In developing these guidelines, the State Board shall consider (i) ways to promote parental and community involvement in the pilot programs, (ii) relevant State and federal constitutional concerns such as freedom of religion and freedom of speech, and (iii) the ability of students to purchase the uniforms.

Local boards in the pilot units shall establish requirements, consistent with the State Board's guidelines, for students enrolled in any of their schools to wear uniforms at school during the regular school day.

No State funds shall be used for the uniforms.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1995.

H.B. 639 **CHAPTER 335**

AN ACT TO AMEND THE PROVISIONS UNDER WHICH THE PIEDMONT TRIAD AIRPORT AUTHORITY REGULATES PARKING AT THE PIEDMONT TRIAD INTERNATIONAL AIRPORT.

The General Assembly of North Carolina enacts:

Section 1. Sections 1 through 5.5 of Chapter 1273 of the 1953 Session Laws, as amended by Chapter 245 of the 1961 Session Laws, Chapter 354 of the 1975 Session Laws, Chapter 431 of the 1983 Session Laws, Chapter 696 of the 1987 Session Laws, and Chapter 990 of the 1987 Session Laws (Reg. Sess., 1988) read as rewritten:

"Section 1. Declaration of necessity. The Piedmont Triad Airport Authority is a body politic and corporate and is the owner and operator of the Piedmont Triad International Airport in Guilford County; and traffic congestion, confusion and difficulties are being experienced by the operators of motor vehicles and the general public using said airport, resulting in possible danger and injuries to persons and damages to property and such traffic should be regulated.

Sec. 2. Definition. The term 'motor vehicle' as used herein shall mean every vehicle which is self-propelled, including but not limited to automobiles, trucks and aircraft, and every vehicle designed to run upon the highways, or on the surface of airports, which is pulled by a self-propelled vehicle. The term 'street or roadway' as used herein shall mean those portions of the Piedmont Triad International Airport which have been improved and designed and are ordinarily used for ground motor vehicular traffic, except those portions so improved within the Air Operations Area as said area is defined and established from time to time by the Piedmont Triad Airport Authority.

Sec. 3. Power to adopt rules and regulations. The Board of Directors of the Piedmont Triad Airport Authority is hereby authorized and empowered to adopt, amend, or repeal, from time to time, as it may deem necessary, useful or proper, rules and regulations relating to or concerning the use, operation and parking of motor vehicles on the Piedmont Triad International

Airport in Guilford County. The use and operation of such motor vehicles may be prohibited or restricted in certain areas and the places, lengths of time for parking and manner of parking may be likewise regulated and rules made in reference thereto.

Sec. 3.1. The Board of Directors of the Piedmont Triad Airport Authority may by rule or regulation set aside spaces on the Piedmont Triad International Airport in designated parking areas in which motor vehicles may be parked for specified periods of time. To regulate parking in such spaces, the Board of Directors may install a system of parking meters and ~~make it unlawful for any person to park~~ prohibit any person from parking a motor vehicle in a metered space without activating the meter for the entire time that the vehicle is parked, up to the maximum length of time allowed for that space. The meters may be activated by using coins of the United States. Proceeds from the use of such parking meters must be used to defray the cost of enforcing and administering traffic and parking rules and regulations or other purpose related to parking and traffic or as a pledge to secure the payment of or in payment of revenue bonds issued in whole or in part for the construction of such parking areas or the roadways on the Airport operated by the Airport Authority.

Sec. 3.2. All of the provisions of Chapter 20 of the General Statutes of North Carolina relating to the use of streets, highways and public vehicular areas and the operation of motor vehicles thereon shall apply to the streets and roadways and parking lots and parking structures designed for ground transportation motor vehicles of the Piedmont Triad International Airport. Any person violating any of the provisions of Chapter 20 as so applied shall, upon conviction thereof, be punished as prescribed by Chapter 20 for such violations. Nothing herein contained shall be construed as in any way interfering with the ownership or control of said streets and roadways and parking lots and parking structures by the Piedmont Triad Airport Authority. The Board of Directors of the Piedmont Triad Airport Authority may also adopt rules and regulations relating to the use of the streets and roadways and parking lots and parking structures of the Airport not inconsistent with the provisions of Chapter 20, including rules and regulations fixing speed limits lower than those provided in Chapter 20.

Sec. 4. Posting rules and regulations. All regulations and rules relating to motor vehicles adopted by the Board of Directors of the Piedmont Triad Airport Authority pursuant to this Act shall be posted at the Piedmont Triad International Airport in its public waiting room and at two other places on said airport, and in addition, all parking areas shall be plainly marked so that any person parking a motor vehicle in any area shall be able to observe any prohibited or restricted use of same and the length of time any vehicle may park in such area.

Sec. 5. ~~Violation of any rule or regulation adopted by the Board of Directors of the Greensboro-High Point Airport Authority relating to the use, operation and parking of motor vehicles on the streets and roadways and in parking lots and parking structures designed for ground transportation motor vehicles of the Piedmont Triad International Airport shall be an infraction punishable by a penalty of not more than one hundred dollars ($100.00). Violation of any other rule or regulation adopted by the~~

~~Board of directors of the Greensboro-High Point Airport Authority pursuant to this act shall be a misdemeanor punishable by a fine not to exceed one hundred dollars ($100.00) or imprisonment for a period of time not to exceed 10 days, in the discretion of the court.~~ Except as provided in Section 5.1, violations of the rules and regulations adopted by the Board of Directors of the Piedmont Triad Airport Authority pursuant to this act have the following status and are punishable as follows:

(1) Violation of a rule or regulation relating to the use, operation, or parking of motor vehicles on the streets and roadways and in parking lots and parking structures designed for ground transportation motor vehicles at the Piedmont Triad International Airport is an infraction and is punishable by a penalty of not more than one hundred dollars ($100.00).

(2) Violation of any other rule or regulation adopted pursuant to this act is a Class 3 misdemeanor.

Sec. 5.1. ~~Any officer of the Airport Police established by the Greensboro High Point Airport Authority is authorized and empowered in the case of the violation of any regulation or rule adopted by the Authority relating to the parking of automobiles, trucks, and motorcycles in any loading zone, or designated parking area owned by the Authority, or upon any public street within the property of the Authority, and made effective pursuant to the provisions of this act to give, serve, or mail, any person a ticket or citation for any such violation; any person receiving such citation or ticket for any such automobile, truck, or motorcycle parking violation may pay, within the time named in such ticket or citation, to the Authority, for delivery to the finance office of Guilford County, in person or by mil, the sum of three dollars ($3.00) for each violation as payment of a penalty therefor and such payment shall constitute an admission of responsibility for the infraction and a waiver of the right to a hearing thereon; and such person shall not be required to appear at any judicial proceeding to answer said violation, and such person shall be exempt from any further penalty. In the event any officer of said Airport Police deems it necessary to move any automobile, truck, or motorcycle from any area where a violation occurs, such officer is authorized and empowered to move, or cause the moving of, such automobile, truck, or motorcycle, and to park and store or cause to be parked and stored such automobile, truck, or motorcycle, and neither the Authority nor the said officer shall have liability for any such charges for removal and storage of such automobile, truck, or motorcycle. The owner or person in charge of such automobile, truck, or motorcycle shall pay all costs of such removal and storage and the same shall constitute a lien on the vehicle the may be enforced in the manner provided by law for enforcement of possessory liens for towing and storage of motor vehicles.~~ Notwithstanding Section 5 of this act, the Piedmont Triad Airport Authority may specify that certain violations of rules or regulations relating to the parking of ground transportation motor vehicles at the Piedmont Triad International Airport shall constitute neither an infraction nor a misdemeanor, but shall instead subject the offender to a civil penalty not to exceed fifty dollars ($50.00). The amount of the civil penalty shall be determined by the Authority in its discretion, and may be changed from time

to time in the discretion of the Authority. The Authority may further provide that the failure of the offender to pay the penalty within a prescribed period of time after issuance of a citation therefor shall subject the offender to a civil action in the nature of a debt to collect the civil penalty, plus an additional penalty not to exceed fifty dollars ($50.00), together with the costs of the action to be taxed by the court. The Airport Police established by the Authority as well as other employees of, and designated by, the Authority may issue citations charging violations and stating the amount of the civil penalty assessed, the period of time for payment, and the additional penalty for which the offender shall be liable, together with court costs, in the event of the offender's failure to pay the initial penalty within the prescribed time. All civil penalties and additional penalties collected by the Authority for violation of any rule or regulation which it makes enforceable by civil penalty under this section shall be paid into the general fund of the Authority.

Sec. 5.2. ~~No State tax shall be paid to the State of North Carolina in cases finally disposed of by payment of the amount of the penalty.~~ In any action brought in any court of this State to collect any civil penalties provided for in Section 5.1 of this act for violation of any rule or regulation of the Piedmont Triad Airport Authority relating to the parking of a ground transportation motor vehicle, the fact that any motor vehicle was found parked at the Piedmont Triad International Airport in violation of the rule or regulation shall be prima facie evidence that the vehicle was parked and left at the location where the violation occurs by the person in whose name the vehicle is registered with the North Carolina Division of Motor Vehicles or with the comparable agency of any other state. In any prosecution for violation of any rule or regulation constituting an infraction, the rule or regulation shall be considered a municipal ordinance within the meaning of G.S. 20-162.1, but the infraction penalty shall be as specified in Section 5 of this act.

Sec. 5.3. ~~It shall be the duty of the Airport Police established by the Greensboro-High Point Airport Authority to enforce the provisions of this act, and the Authority shall collect the penalties for violation of the rules and regulations adopted and made effective hereunder and shall account for said funds.~~ In the event any person shall violate any rule or regulation relating to the parking of a ground transportation motor vehicle at the Piedmont Triad International Airport, and any officer of the Airport Police deems it necessary to move that motor vehicle from the area where the violation occurs, the officer may move, or cause the moving of, that motor vehicle and to park and store or cause to be parked and stored that motor vehicle, and neither the Authority nor the officer shall be liable for any charges for the removal and storage of that motor vehicle. The owner or person in charge of that motor vehicle shall pay all costs of the removal and storage, and the charges shall constitute a lien on the vehicle that may be enforced in the manner provided by law for enforcement of possessory liens for towing and storage of motor vehicles.

Sec. 5.4. ~~All penalties collected pursuant to the provisions of this act shall be paid by the Greensboro-High Point Airport Authority to the finance~~

~~office of Guilford County for disbursement in the manner provided by law.~~ It shall be the duty of the Authority to enforce the provisions of this act.

~~Sec. 5.5. Nothing contained in Sections 5.1, 5.2, 5.3, or 5.4 hereof shall prevent prosecution and imposition of the penalties for violations pursuant to provisions of Section 5 hereof in the event payment of said three dollars ($3.00) penalty is not made. In any such prosecution, the rules and regulations of the Authority shall be considered municipal ordinances within the meaning of G.S. 20-162.1.~~"

Sec. 2. If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, that judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Sec. 3. This act becomes effective December 1, 1995.

In the General Assembly read three times and ratified this the 27th day of June, 1995.

H.B. 848 **CHAPTER 336**

AN ACT TO REQUIRE NOTICE TO AND CONSULTATION WITH THE MINOR'S LEGALLY RESPONSIBLE PERSON BEFORE DISCHARGE FROM TREATMENT OF MENTAL ILLNESS OR SUBSTANCE ABUSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-57 reads as rewritten:

"§ *122C-57. Right to treatment and consent to treatment.*

(a) Each client who is admitted to and is receiving services from a facility has the right to receive age-appropriate treatment for mental health, mental retardation, and substance abuse illness or disability. Each client within 30 days of admission to a facility shall have an individual written treatment or habilitation plan implemented by the facility. The client and ~~his~~ the client's legally responsible person shall be informed in advance of the potential risks and alleged benefits of the treatment choices.

(b) Each client has the right to be free from unnecessary or excessive medication. Medication shall not be used for punishment, discipline, or staff convenience.

(c) Medication shall be administered in accordance with accepted medical standards and only upon the order of a physician as documented in the client's record.

(d) Each voluntarily admitted client or ~~his~~ the client's legally responsible person has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be

administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the client or ~~his~~ the client's legally responsible person. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment.

(d)(1) Except as provided in G.S. 90-21.4, discharge of a voluntarily admitted minor from treatment shall include notice to and consultation with the minor's legally responsible person and in no event shall a minor be discharged from treatment upon the minor's request alone.

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the client or ~~his~~ the client's legally responsible person in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating physician and a second physician, who is either the director of clinical services of the facility, or ~~his~~ that person's designee, either:

(1) The client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give ~~him~~ the client a realistic opportunity of improving his condition;

(2) There is, without the benefit of the specific treatment measure, a significant possibility that the client will harm himself or others before improvement of ~~his~~ the client's condition is realized.

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the client or ~~his~~ the client's legally responsible person. This consent may be withdrawn at any time by the person who gave the consent. The Commission may adopt rules specifying other therapeutic and diagnostic procedures that require the express and informed written consent of the client or ~~his~~ the client's legally responsible person prior to their initiation."

Sec. 2. This act becomes effective October 1, 1995, and applies to admissions on or after that date.

In the General Assembly read three times and ratified this the 27th day of June, 1995.

S.B. 661 **CHAPTER 337**

AN ACT RELATING TO THE DEFINITION OF SUBDIVISION IN MONTGOMERY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-335 reads as rewritten:

"*§ 153A-335. 'Subdivision' defined.*

For purposes of this Part, 'subdivision' means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a

change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this ~~Part;~~ Part, provided that the grantor of any land who by deed subdivides the land other than by recorded subdivision plat shall include in the deed a statement as to why the subdivision is exempt from these regulations by reference to one or more of the following subsections:

(1) The combination or recombination of portions of previously subdivided and recorded lots ~~if~~ where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision ~~regulations;~~ regulations and the combination or recombination does not change or alter the location of a public or private road as shown on a plat previously recorded in the county registry of deed;

~~(2) The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved;~~

~~(3) The public acquisition by purchase of strips of and for widening or opening streets; and~~

~~(4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations.~~

(2) The public acquisition by purchase of strips of land for widening or opening of streets;

(3) The conveyance of a lot or tract for the purpose of dividing lands among the tenants in common, all of whom inherited by intestacy or by will, the land from a common ancestor;

(4) The division of land by any method of transfer among members of a lineal family, which shall include direct lineal descendants (children, grandchildren, great-grandchildren) and direct lineal ascendants (father, mother, grandfather, grandmother) and brothers, sisters, nieces, and nephews;

(5) The division of land pursuant to an order of the General Court of Justice;

(6) The division of land for cemetery lots or burial plots;

(7) The conveyance of a tract or parcel of land of at least 20,000 square feet exclusive of State right-of-way for a road with at least 100 feet frontage upon a State-maintained road, as well as a driveway permit previously issued by the Department of Transportation along the 100 foot frontage and a means of sewage disposal by a previously issued permit from the Division of Environmental Management of the county health department;

(8) The division of land into parcels of five acres or more where the grantor records a road right-of-way agreement prior to or simultaneously with the recording of the deed, which said agreement provides for access to the parcel by a right-of-way of at least 45 feet in width and contains an agreement for construction and maintenance of the road; and

(9) The division of land into parcels where 10 or fewer lots result after the subdivision is completed and each lot in the subdivision is at least one acre in size. The intent of the exemption provided by this subsection is to provide for special situations in the rural area of the county in accordance with standards and procedures as set forth in the county subdivision ordinance."

Sec. 2. This act applies to Montgomery County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1995.

S.B. 685 **CHAPTER 338**

AN ACT TO ALLOW THE CITY OF DURHAM TO REQUIRE CERTAIN ACTIONS OF ITS TRANSPORTATION AUTHORITY TO BE BY SUPERMAJORITY.

The General Assembly of North Carolina enacts:

Section 1. Section 109.1 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as added by Chapter 560 of the 1991 Session Laws, reads as rewritten:

"Sec. 109.1. *Public Transportation Authority.* In establishing a Public Transportation Authority pursuant to the North Carolina Public Transportation Authority Act, Article 25 of Chapter 160A of the General Statutes, the City Council may:

(1) ~~Require~~ Except as provided by subdivision (1a) of this section, require that a majority vote of all of the members of the Authority shall be required to constitute action of the Authority;

(1a) Require a supermajority vote of all the members of the Authority in order to take certain actions prescribed by the City Council, including, but not limited to, hiring and firing personnel and changing bus routes;

(2) Provide that no member of the Authority shall be excused from voting except on matters involving consideration of the member's own official conduct, or where the member's financial interests are involved, and that in all other cases, a failure to vote by a member who is physically present at an Authority meeting, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote; and

(3) Appoint and provide compensation for alternate members to serve on the Authority in the absence of any regular member and to prescribe the terms of such alternate members. Each alternate member, so appointed, while attending any meeting of the Authority and serving in the absence of any regular member, shall have and exercise all the powers and duties of a regular member."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1995.

H.B. 682 **CHAPTER 339**

AN ACT MAKING FURTHER SUNDRY AMENDMENTS CONCERNING LOCAL GOVERNMENTS IN ORANGE AND CHATHAM COUNTIES.

The General Assembly of North Carolina enacts:

PART 1. ORANGE COUNTY

NOTICE OF ZONING REGULATION

Section 1. (a) G.S. 153A-343(b) reads as rewritten:

"(b) The first class mail notice required under subsection (a) of this section shall not be required in the following situations:

(1) The total rezoning of all property within the boundaries of a county or a zoning area as defined in G.S. 153A-342 unless rezoning involves zoning of parcels of land to less intense or more restrictive uses. If rezoning involves zoning of parcels of land to less intense or more restrictive uses, notification to owners of these parcels shall be made by mail in accordance with subsection (a) of this section;

(2) The zoning is an initial zoning of the entire zoning jurisdiction area;

(3) The zoning reclassification action directly affects more than 50 properties, owned by a total of at least 50 different property owners;

(4) The reclassification is an amendment to the zoning text; or

(5) The county is adopting a water supply watershed protection program as required by G.S. 143-214.5.

In any case where this subsection eliminates the notice required by subsection (a) of this section, a county shall publish once a week for four successive calendar weeks in a newspaper having general circulation in the area maps showing the boundaries of the area affected by the proposed ordinance or amendment. The map shall not be less than one-half of a newspaper page in size. The notice shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the county's jurisdiction or outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by mail pursuant to this section. In any case where this subsection eliminates the notice required by subsection (a) of this section, a county need not publish once a week for four successive weeks the area maps required in this subsection if the procedures adopted pursuant to subsection (a) of this section provide for the first class mail notice required in subsection (a) of this section in all cases, including those for which first class mail is not required under this subsection. The person or persons mailing the notices shall certify to the board of commissioners that fact, and the certificates shall be deemed conclusive in the absence of fraud.

In addition to the published notice, a county shall post one or more prominent signs immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning."

(b) This section applies to Orange County only.

CIVIL RIGHTS ORDINANCE

Sec. 2. Section 6 of Chapter 246 of the 1991 Session Laws, as rewritten by Section 14 of Chapter 358 of the 1993 Session Laws, is amended by adding a new subsection to read:

"(f1) (1) The Board of Commissioners may authorize the Commission to serve as a deferral agency for cases deferred by the Equal Employment Opportunity Commission as provided in section 706 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., or for cases deferred by the Fair Housing Division of the United States Department of Housing and Urban Development as provided in 42 U.S.C. § 3616.

(2) When a complaint is filed with the Commission, pursuant to the Ordinance, which alleges employment discrimination naming Orange County as a respondent, the Commission may defer the case to the Office of Administrative Hearings.

(3) The Office of Administrative Hearings is designated to serve as the Commission's deferral agency for cases deferred by the Commission to the Office of Administrative Hearings as provided by subdivision (2) of this subsection and as such shall have all of the powers and duties necessary to function as a deferral agency including those enumerated in G.S. 7A-759.

(4) The Chief Administrative Law Judge for the Office of Administrative Hearings may contract with Orange County to serve as a deferral agency. The Civil Rights Division in the Office of Administrative Hearings may carry out the functions of a deferral agency for the Office of Administrative Hearings."

ENFORCE ORDINANCES BY ALTERNATIVE REMEDIES

Sec. 3. (a) G.S. 153A-123(f) reads as rewritten:

"(f) Subject to the express terms of the ordinance, a county ordinance may be enforced by any one or more of the remedies authorized by this section. Each of these remedies may be pursued by a county alternatively, in the same action or in independent actions against an ordinance violator. It is not a defense to an action by a county to enforce an ordinance by one of the remedies authorized by this section that there is a separate action pending or completed involving the same subject matter and one or more of the same parties so long as a subsequent action pursuing an alternative remedy involves a different incident that is a violation of the ordinance from the incident or incidents that is or that are the violation alleged in the pending or completed action."

(b) This section applies to Orange County only.

PART 2. TOWN OF CHAPEL HILL

FILLING OF CERTAIN VACANCIES

Sec. 4. Section 2.4(2) (Section 2.3(2) under local revision pursuant to G.S. 160A-496) of the Charter of the Town of Chapel Hill, being Chapter 473, Session Laws of 1975, as amended by Section 1(2), Chapter 693, Session Laws of 1979, and as rewritten by Chapter 1107 of the Session Laws of 1979 reads as rewritten:

"(2) A vacancy occurring on the council, which occurs during the period beginning with the first day of the four year term of office and ending ~~on the fortieth day prior to the next regular biennial town election~~ three days before the end of the filing period for that office as provided by the General Statutes shall be filled by appointment of the town council only until the next general municipal election at which time a member shall be elected to the remainder of said unexpired term. The candidate receiving the fifth highest number of votes (and if necessary the 6th, 7th and 8th highest number) following those elected for full four-year terms, shall be declared elected for the remainder of the unexpired term. A vacancy occurring on the council, which occurs at any other time shall be filled by appointment of the town council for the remainder of the unexpired term."

CHAPEL HILL MOTOR VEHICLE TAX

Sec. 4.1. (a) G.S. 20-97(a) as it applies to the Town of Chapel Hill under Section 2 of Chapter 392 of the Session Laws of 1991, as amended by Chapter 456 of the 1993 Session Laws, reads as rewritten:

"(a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that cities and towns may levy not more than ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) per year upon any vehicle resident therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars ($15.00) per year upon each vehicle operated in such city or town as a taxicab."

(b) This section applies only to the Town of Chapel Hill.

PART 3. TOWN OF CARRBORO

WAIVER OF PERFORMANCE BOND

Sec. 5. The Charter of the Town of Carrboro, being Chapter 476 of the Session Laws of 1987, is amended by adding a new section to read:

"*Section 3-5. Performance and Payment Bonds for Construction Contracts.* G.S. 44A-26(a) does not apply to the Town of Carrboro to the extent that it requires performance and payment bonds for construction contracts in excess of fifteen thousand dollars ($15,000). However, the Town shall be bound by the provisions of G.S. 143-129 relating to performance and payment bonds or equivalent security for construction contracts, and the Town may require such bonds or equivalent security for construction contracts of any amount."

CARRBORO MOTOR VEHICLE TAX

Sec. 5.1. (a) G.S. 20-97(a) as it applies to the Town of Carrboro under Section 3 of Chapter 392 of the Session Laws of 1991, as amended by Chapter 456 of the 1993 Session Laws, reads as rewritten:

"(a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that cities and towns may levy not more than ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) per year upon any vehicle resident therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars ($15.00) per year upon each vehicle operated in such city or town as a taxicab."

(b) This section applies only to the Town of Carrboro.

CARRBORO ANNEXATION

Sec. 5.2. (a) Section 1-2 of the Charter of the Town of Carrboro, being Chapter 476 of the Session Laws of 1987, reads as rewritten:

"*Section 1-2. Corporate Boundaries.* The ~~corporate boundaries of the Town of Carrboro shall be those established by Chapter 660 of the Session Laws of 1969 and Chapter 71 of the Session Laws of 1975 as amended by annexations conducted since the effective dates of those acts. An official map of the current town boundaries shall be kept on file in the office of the town clerk.~~ Town of Carrboro includes the entire area within the corporate boundary description set forth below as well as any other area annexed by the town prior to, on, or after March 15, 1995:

BEGINNING at a point on the existing Carrboro-Chapel Hill Corporate Limits Line, said beginning point being located N. 87 degrees 05' W. 155 feet from the northwest corner of the Chapel Hill Board of Education Property (Lincoln Center) Lot 13, Block C, Orange County Tax Map 100, dated April 1, 1963 revised March 25, 1991; running thence with the Chapel Hill Corporate Limits Line the following courses and distances: S. 87 degrees 05' E. 155 feet, S. 4 degrees 20' W. 300 feet, S. 5 degrees 32' W. 297 feet, S. 2 degrees 47' E. 35 feet, due west 30 feet and south along the eastern property line of Lot 17, Block C, Orange County Tax Map 100 dated January 1, 1966 Revised, 298 feet to the northern right of way line of Merritt Mill Road; running thence a new line the following courses and distances: westward along the northern right-of-way line of Merritt Mill Road as it curves in a clockwise direction 975 feet to the center line of Smith Level Road; running thence southwestward along the center line of Smith Level Road 750 feet to the center line of Morgan Creek, then along the eastern right of way of Smith Level Road 2,550 feet to the northern right-of-way line of Culbreth Road; running thence along the northern right-of-way line of Culbreth Road S. 76 degrees 24' E. a distance of 357.24 feet, thence to the center line of the Culbreth Road Right of Way S. 13 degrees 36' W. a distance of 30 feet, thence S. 48 degrees W. 189.88 feet along the eastern property line of the Teal Place Subdivision Orange County Plat Book 57 Page 118, thence along the southern property line of the Teal Place Subdivision N. 61 Degrees 44' W. 308.80 feet to the center line of Smith

Level Road; thence continuing in a southerly direction along the center line of Smith Level Road to a point where an easterly extension of the southern right-of-way line of Rock Haven Road intersects with the center line of Smith Level Road, thence in a westerly direction along the Rock Haven Road southern right-of-way line N 89 degrees 06' 08" west 1,248 feet to a stake in the line of the Glover Property; thence with that line North 00 degrees 16' 55" West 60.01 feet to an iron pipe in the northerly margin of the Rock Haven Road right-of-way, continuing along the eastern boundary of the Glover Property North 00 degrees 16' 55" West 490.45 feet to a concrete monument at a common corner between the Villages property (see Book of Maps 21 at page 34 in said Registry) and the Glover property (see Deed Book 164 at Page 429 in said Registry; thence along the western property line of the Villages North 0 degrees 11' 50" West 200 feet to a rock pile; thence in a westerly direction along the property line of the Highland Hills Apartments Property South 78 degrees' 43" West, 1,498.84 feet to an iron pipe in Mt. Carmel Spring Branch in D Norris Ray's line; thence, 1640 feet with Ray's line and the centerline of said branch as it meanders in a northerly direction to the centerline of Morgan Creek; thence with said creek as it meanders in an easterly direction 441 feet to the western property line of the Chapel Hill Tennis Club Property (Plat Book 49 page 130), then along said line North 10 degrees 16' West 1.561.97 feet; then North 17 degrees 38' West 41 feet, then North 17 degrees 32' West 108.40 feet to a point where the western property line of Section II of the Tennis Club Estates intersects with the property line of the Poplar Place Apartments Tax Map 116 Lot 5 (formerly Woodbridge Phase II); thence North 17 degrees 49' West along said property line 84.74 feet to a point; thence South 49 degrees 17' 51" West 69.50 feet to a point; thence South 54 degrees 42' 23" West 237.27 feet to a point; thence South 26 degrees 55' 54" East 64.57 feet to a point; thence North 89 degrees 44' 55" West 448.36 feet to a concrete monument; thence North 45 degrees 03' 37" West 41.60 feet to a point, thence South 44 degrees 56' 23" West 35 feet to a point along the western right-of-way line of Old Fayetteville Road Extension; thence along said right-of-way North 45 degrees 03' 37" West 670 feet to a point of intersection with the western right-of-way of Old Fayetteville Road (State Road 1937) and continuing along said right-of-way in a northerly direction 488 feet to the intersection with Jones Ferry Road right-of-way and continuing in a northerly direction across Jones Ferry Road along the western right-of-way line of Old Fayetteville Road 530 feet to a point on the eastern right of way line of Old Fayetteville Road to where it intersects with the northwestern property line of Tax Map 114 Lot 16 (Willow Springs Long Term Care Facility); thence along said line North 60 degrees 57' 42" East 638.8 feet to a point on the Willow Creek Shopping Center property line (plat book 44 page 81) thence along said property line North 80 degrees 19' 16" West 68.25 feet; North 38 degrees 09' 50" West 191.50 feet to an existing iron pipe; North 18 degrees 53' 55" West 71.60 feet to an existing iron pipe; North 08 degrees 40' 37" East 308.55 feet to an existing iron pipe; North 09 degrees 19' 14" East 31.04 feet to an existing iron pipe which is in the Southern boundary Line of the property of Harris Inc. (now or formerly); thence in a westward direction along the southern boundary of

the Harris Inc. Property (Plat Book 32 Page 64) South 71 degrees 45' 21" West 57.72 feet; North 75 degrees 52' 16" West 48.72 feet; North 30 degrees 39' 38" West 59.72 feet; North 74 degrees 58' 13 seconds West 83.24 feet; North 30 degrees 34' 19" West 174.64 feet; North 03 degrees 49' 22" West 141 feet; North 44 degrees 51' 06" West 113.68 feet; North 10 degrees 43' 01" East 124.57 feet; North 12 degrees 02' 50" East 112.76 feet to an existing iron pin on the northeastern corner of Section Two of the Fenway Park Subdivision (Plat Book 32 Page 64); thence along the Southern boundary of Fenway Park Subdivision South 77 degrees 10' 00" West 112.00 feet; North 52 degrees 17' 00" West 91.00 feet; North 27 degrees 03' 00" West 86.00 feet; North 10 degrees 01' 47" West 60.39 feet to a point on the Eastern Boundary of the Ramsgate Apartment Property (Plat Book 44 Page 156); thence along the Ramsgate Apartments Property line South 62 degrees 38' 47" West 365.61 feet to the eastern right-of-way of Old Fayetteville Road (State Road 1937); thence to the Western right-of-way of Old Fayetteville Road and running along said right-of-way in a Northward direction a distance of 3,130 feet to a point on the Southeastern corner of the Southern Bell Telephone and Telegraph Company property (Tax Map 114 Lot 1F); thence in a westward direction running along said property line South 61 degrees 12' 25' West 610.00 feet to an iron stake; North 28 degrees 55' 37" West 697.62 feet to an iron stake; North 12 degrees 28' 35" East 210.00 feet to an iron stake on the southwestern corner of the Marvin Emmett Cheek property; running thence with said Cheek property South 71 degrees 03' " East 209.45 feet to an iron axle; running thence North 12 degrees 33 minutes 43 seconds East 413.39 feet to an iron stake in the southern right-of-way line of N.C. Highway #54; thence northwest across the right-of-way of N.C. Highway #54 to the southeastern corner of the Roy D. & Gracie M. Brown property (Tax Map 108 Lot 49) (deed book 221 page 716) and the northern right-of-way line of N.C. Highway #54 and western right-of-way of Old Fayetteville Road (State Road 1107); thence north along the western right-of-way line of Old Fayetteville Road (State Road 1107) for a distance of 2,615 feet to the southern right-of-way line of Strowd Lane (State Road 1106); thence west along the southern right-of-way line of Strowd Lane (State Road 1106) for a distance of 719 feet to the northeast corner of the Mary W. Cheek property (Tax Map 108 Lot 39F); thence south along the eastern boundary of said property South 04 degrees 02' 39" West, 439 feet to a point; then South 85 degrees 57' 21" West, 181.28 feet to the Carrboro Community Park Property; thence south along the Carrboro Community Park property South 04 degrees 02' 39" west 1,849 feet to a corner on the northern right-of-way line of N.C. Highway #54; thence, North 70 degrees 34' West 1,229.16 feet; thence North 02 degrees 24' East 438 feet to a point on the Edgar K. Lloyd & Hazel H. Lloyd property; thence North 69 degrees 18' 28" West 611.39 feet to a point; thence South 21 degrees 11' 35" West 500.00 feet to a point on the boundary of N.C. Highway #54; thence with the right-of-way, North 67 degrees 25' West, 1652.03 feet to a point on Morgan Creek; thence running along said creek North 11 degrees 08' 18" East, 162.30 feet to a point; thence, North 02 degrees 38' 18" East, 200 feet to a point; thence, North 20 degrees 38' 18" East, 165 feet to a point; thence, North 12 degrees 38'

18" East, 73.70 feet to a point; thence, from the southwest corner of the Winsome Lane Subdivision North 16 degrees 43' 40" East, 133.84 feet to a point: thence, North 05 degrees 18' 30" West, 116.87 feet to a point; thence, North 19 degrees 34' 33" East, 65.84 feet to a point; thence, North 46 degrees 51' 44" East, 135.56 feet to a point; thence, North 38 degrees 17' 48" East, 251.38 feet to a point; thence, North 22 degrees 10' 00" East, 42.37 feet to a point; thence, North 03 degrees 16' 07" East, 161.71 feet to a point; thence, North 21 degrees 27' 33" West, 101.22 feet to a point; thence, North 08 degrees 28' 10" West 327.31 feet to a point; thence, North 12 degrees 39' 27" West, 287.11 feet to a point; thence North 24 degrees 39' 13" West, 217.54 feet to a point; thence, North 14 degrees 00' 39" West, 137.84 feet to a point: thence leaving the creek, North 44 degrees 06' 44" East, 37.17 feet to a point; thence, North 07 degrees 40' 44" West, 150.00 feet to a point; thence, North 44 degrees 03' 58" East, 396.52 feet to a point; thence, South 05 degrees 19' 16" West, 385.23 feet to a point; thence, South 69 degrees 45' 53" East, 131.75 feet to a point: thence, South 89 degrees 38' 28" East, 230.80 feet to a point; thence, North 72 degrees 17' 32" East, 164.85 feet to a point: thence, South 84 degrees 41' 39" East, 165.00 feet to a point: thence, South 05 degrees 28' 01" West, 52.80 feet to a point: thence, South 83 degrees 36' 20" East, 809.44 feet to a point: thence, North 03 degrees 59' 41" West, 109.94 feet to a point; thence, South 84 degrees 46' 17" East, 330.00 feet to a point; thence, South 84 degrees 01' 35" East, 1400.66 feet to a point; thence South 83 degrees 54' 19" West, 800.31 feet to a point on the western right-of-way line of Old Fayetteville Road (State Road 1107); thence in a northward direction along the western right-of-way line of Old Fayetteville Road (State Road 1107) a distance of 1,280 feet to intersect with the western right-of-way of Old N.C. 86 (State Road 1009); thence, continuing in a northward direction along the western right-of-way of Old N.C. 86 (State Road 1009) a distance of 220 feet; thence, East 60 feet to a point on the eastern right-of-way of Old N.C. 86 (State Road 1009) and the northwest corner of the Orange Water and Sewer Authority's water pump station property (Tax Map 108 Lot 2B); thence along said property South 79 degrees 08' 59" East, 184.74 feet to a point; thence, South 30 degrees 51" 18" East, 156.34 feet to a point; thence South 56 degrees 16' 27" West, 167.71 feet to a point on the eastern right-of-way of Old N.C. 86 (State Road 1009); thence along said right-of-way South 42 degrees 45' 13" East, 146.14 feet to a point; thence, South 53 degrees 21' 10" East 135.73 feet to a point on the western corner of the Barrington Hills Subdivision (Plat Book 22 Page 44); thence, North 46 degrees 20' 08" East, 105.26 feet to a point; thence North 46 degrees 20' 22" East, 292.37 feet to a point; thence, North 46 degrees 24' 10" East, 449.81 feet to a point; thence, North 46 degrees 12' 05" East, 177.80 feet to a point; thence, North 80 degrees 04' 08" East 53.09 feet to a point on the southwest corner of the Arcadia Subdivision (Plat Book 72 Page 103); thence along the western boundary of the Arcadia Subdivision, North 06 degrees 37' 06" East 419.63 feet to a point in the creek; thence, with the creek North 56 degrees 30' 36" West 164.21 feet to a point in the creek; thence continuing with said creek, North 53 degrees 18' 27" West, 122.56 feet to an iron stake; thence North 11 degrees 07'

00″ West 514.27 feet to an iron stake in the line of Robert C. Hogan; thence, with Hogan's line South 89 degrees 01' 52″ East 300.00 feet to a point; thence, South 89 degrees 04' 02″ East 523.86 feet to an iron pipe in the western line of the Wexford Subdivision; thence along said subdivision boundary North 05 degrees 33' 13″ East, 1,222.73 feet to an iron pipe in the southern right-of-way line (allowing 30 feet from center) of Homestead Road (State Road 1777),and continuing 60 feet to a point on the northern right-of-way of Homstead Road; thence, eastward along the northern right-of-way line of Homestead Road (State Road 1777) a distance of 810 feet to a point; thence to an iron pipe on the southern right-of-way line of Homestead Road (State Road 1777) and the northeast corner of the Wexford Subdivision; thence, south 29 degrees 24' 25″ West, 247.12 feet to an iron pipe; thence South 23 degrees 34' 46″ West, 482.78 feet to an iron pipe, thence, South 05 degrees 33' 13″ West, 221.63 feet to an existing concrete monument; thence, South 89 degrees 08' 14″ East, 216.25 feet to an iron pipe; thence, South 00 degrees 58' 17″ West, 143.93 feet to an iron pipe; thence South 27 degrees 33' 55″ West, 67.02 feet to an iron pipe; thence South 00 degrees 58' 17″ West, 248.53 feet to an iron pipe; thence South 06 degrees 44' 50″ East, 568.18 feet to an iron pipe in the line of Virginia Pollitzer Lieth's property (Plat Book 36 Page 66); thence, South 89 degrees 06' 52″ West, 221.61 feet to an iron pipe; thence South 03 degrees 15' 10″ East, 56.30 feet to an iron pipe; thence South 03 degrees 14' 40″ East, 428.03 feet to an iron pipe; thence, continuing South 03 degrees 14' 40″ East, 50.07 feet to a point; thence, South 3 degrees 20' 3″ East, 137.79 feet to an existing iron pipe on the northwest corner of the Cates Farm Subdivision (Plat Book 72 Page 172 & 172.1);thence, along the northern boundary of the Cates Farm Subdivision North 89 degrees 57' 12″ East, 1018.22' to an existing iron pipe on the western boundary of the Cobblestone Subdivision (Plat Book 47 Page 178); thence, North 01 degrees 11' 46″ East, 628.99 feet to an iron pipe on the northwest corner of the Cobblestone Subdivision; thence, South 88 degrees 07' 08″ East, 549.22 feet to the northeast corner of the Cobblestone Subdivision; thence along the eastern boundary of the Cobblestone Subdivision South 02 degrees 19' 28″ East, 2,082.54 feet to an existing iron pipe; thence, South 34 degrees 18' 39″ West, 671.64 feet to an existing iron pipe on the northwest corner of the Sudbury Subdivision (also refereed to as the Fair Oaks Subdivision); thence, along the northern property line of the Sudbury, Fair Oaks, and Waverly Forest Subdivisions North 89 degrees 57' 23″ East, 2,259.15 feet to an iron pipe on the western boundary of the Spring Valley Subdivision; thence, North 01 degrees 02' 46″ East, 302.91 feet to an iron pipe on the northwest corner of the Spring Valley Subdivision; thence, along the northern boundary of the Spring Valley Subdivision North 85 degrees 50' 27″ East, 768.90 feet to a point on the center line of Bolin Creek; thence in an eastward direction along the center line of Bolin Creek for a distance of 4,994 feet to a point where the center line of Bolin Creek intersects with the eastern right-of-way line of the Norfolk and Southern Railroad (A.k.a. the University Railroad) and the Chapel Hill Corporate Limits; running thence with the eastern right-of-way line of the Norfolk and Southern Railroad (A.k.a. the University Railroad) in a southern direction a distance of 972

feet to intersect with the western corporate limits line of the Town of Chapel Hill; running thence with the western corporate limits line of the Town of Chapel Hill 2,600 feet in a southern direction to a point where the Chapel Hill City Limits runs south from the railroad right-of-way centerline; thence in a south western direction along the railroad right-of-way centerline a distance of 230 feet to a point; thence in a southern direction and along the eastern right-of-way of Broad Street a distance of 230 feet to a point of intersection with the northern property line of Lot 9, Block F, Orange County Tax Map 97; thence in an easterly direction along said lot boundary a distance of 170 feet to intersect with the Town of Chapel Hill Corporate Limits; running thence with the western Corporate Limits Line of the Town of Chapel Hill 7,217 feet in a southern and western direction to the point of BEGINNING."

(b) To the extent that properties not previously annexed by the Town of Carrboro are brought within the corporate limits of the Town by the redrawing of the corporate boundaries as set forth in subsection (a) of this section, such properties shall become part of the Town of Carrboro on the effective date of that subsection, and the effect shall be as described in G.S. 160A-58.10.

PART 4. CHATHAM COUNTY
SCHOOL BOARD ELECTIONS/TECHNICAL CORRECTION

Sec. 5.3. Section 3(b) of Chapter 80 of the 1995 Session Laws reads as rewritten:

"(b) For the purpose of electing members of the Board of Education, the County is hereby divided into four resident districts as follows:

District Number One shall consist of all the territory within the boundaries of the precincts of Bynum, North Williams, West Williams, East Williams, and New Hope.

District Number Two shall consist of all the territory within the boundaries of the precincts of East Pittsboro, West Pittsboro, West Mann's Chapel, and East Mann's Chapel.

District Number Three shall consist of all the territory within the boundaries of the precincts of Cape Fear, Haw River, Oakland, Goldston, and Harpers Crossroads.

District Number Four shall consist of all the territory within the boundaries of the precincts of Bennett, Bonlee, South Siler City, North Siler City, Albright, Hadley, and Hickory Mountain.

Changes in precinct boundaries do not affect the districts established by this section."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1995.

H.B. 123 **CHAPTER 340**

AN ACT TO REVISE THE CONTROLLED SUBSTANCE EXCISE TAX.

The General Assembly of North Carolina enacts:

Section 1. Article 2D of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2D.

"Schedule B-D. Controlled Substance Tax.

"§ *105-113.105. Purpose.*

The purpose of this Article is to levy an excise tax ~~on persons who possess controlled substances and counterfeit controlled substances in violation of North Carolina law and to provide that a person who possesses such substances in violation of this Article is guilty of a felony,~~ to generate revenue for State and local law enforcement agencies and for the General Fund. Nothing in this Article may in any manner provide immunity from criminal prosecution for a person who possesses an illegal substance.

"§ *105-113.106. Definitions.*

The following definitions apply in this Article:

(1) Controlled Substance. -- Defined in G.S. 90-87.

~~(2) Counterfeit Controlled Substance. -- Defined in G.S. 90-87.~~

(3) Dealer. -- A person who ~~in violation of G.S. 90-95 possesses, delivers, sells, or manufactures~~ actually or constructively possesses more than 42.5 grams of marijuana, ~~or~~ seven or more grams of any other controlled substance ~~or counterfeit controlled substance~~ that is sold by weight, or 10 or more dosage units of any other controlled substance ~~or counterfeit controlled substance~~ that is not sold by weight.

~~(4) Deliver. -- Defined in G.S. 90-87.~~

(4a) Reserved.

(4b) Reserved.

(4c) Low-street-value drug. -- Any of the following controlled substances:

a. An anabolic steroid as defined in G.S. 90-91(k).

b. A depressant described in G.S. 90-89(d), 90-90(d), 90-91(b), or 90-92(a).

c. A hallucinogenic substance described in G.S. 90-89(c) or G.S. 90-90(e).

d. A stimulant described in G.S. 90-89(e), 90-90(c), 90-91(j), 90-92(d), or 90-93(a)3.

e. A controlled substance described in G.S. 90-91(c), (d), or (e), 90-92(c), (e), or (f), or 90-93(a)1.

~~(5) Manufacture. -- Defined in G.S. 90-87.~~

(6) Marijuana. -- ~~Defined in G.S. 90-87.~~ All parts of the plant of the genus Cannabis, whether growing or not; the seeds of this plant; the resin extracted from any part of this plant; and every compound, salt, derivative, mixture, or preparation of this plant, its seeds, or its resin.

(7) Person. -- Defined in G.S. 105-228.90.

(8) Secretary. -- ~~The Secretary of the Department of Revenue.~~ Defined in G.S. 105-228.90.

"§ *105-113.107. Excise tax on controlled substances.*

An excise tax is levied on controlled substances ~~and counterfeit controlled substances possessed~~ possessed, either actually or constructively, by dealers at the following rates:

(1) At the rate of forty cents (40¢) for each gram, or fraction thereof, of harvested marijuana stems and stalks that have been separated from and are not mixed with any other parts of the marijuana plant.

(1a) At the rate of three dollars and fifty cents ($3.50) for each gram, or fraction thereof, of ~~marijuana or counterfeit marijuana,~~ marijuana, other than separated stems and stalks taxed under subdivision (1) of this section.

(2) At the rate of two hundred dollars ($200.00) for each gram, or fraction thereof, of any other controlled substance ~~or counterfeit controlled substance~~ that is sold by weight.

(2a) At the rate of fifty dollars ($50.00) for each 10 dosage units, or fraction thereof, of any low-street-value drug that is not sold by weight.

(3) At the rate of four hundred dollars ($400.00) for each 10 dosage units, or fraction thereof, of any other controlled substance ~~or counterfeit controlled substance~~ that is not sold by weight.

A quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the dealer's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

"§ *105-113.107A. Exemptions.*

(a) Authorized Possession. -- The tax levied in this Article does not apply to a controlled substance in the possession of a dealer who is authorized by law to possess the substance. This exemption applies only during the time the dealer's possession of the substance is authorized by law.

(b) Certain Marijuana Parts. -- The tax levied in this Article does not apply to the following marijuana:

(1) Harvested mature marijuana stalks when separated from and not mixed with any other parts of the marijuana plant.

(2) Fiber or any other product of marijuana stalks described in subdivision (1) of this subsection, except resin extracted from the stalks.

(3) Marijuana seeds that have been sterilized and are incapable of germination.

(4) Roots of the marijuana plant.

"§ *105-113.108. Reports; revenue stamps.*

The Secretary shall issue stamps to affix to controlled substances ~~and counterfeit controlled substances~~ to indicate payment of the tax required by this Article. Dealers shall report the taxes payable under this Article at the time and on the form prescribed by the Secretary. Dealers are not required to give their name, address, social security number, or other identifying information on the form. Upon payment of the tax, the Secretary shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

"§ *105-113.109. When tax payable.*

The tax imposed by this Article is payable by any dealer who actually or constructively possesses a controlled substance ~~or counterfeit controlled substance~~ in this State upon which the tax has not been paid, as evidenced by a stamp. The tax is payable within 48 hours after the dealer acquires actual or constructive possession of a non-tax-paid controlled ~~substance or counterfeit controlled~~ substance, exclusive of Saturdays, Sundays, and legal holidays of this State, in which case the tax is payable on the next working day. Upon payment of the tax, the dealer shall permanently affix the appropriate stamps to the controlled substance. Once the tax due on a controlled substance ~~or counterfeit controlled substance~~ has been paid, no additional tax is due under this Article even though the controlled substance ~~or counterfeit controlled substance~~ may be handled by other dealers.

~~"§ *105-113.110. Violations of Article a felony.*~~

~~(a) A dealer who possesses marijuana or any other controlled substance or counterfeit controlled substance upon which the tax due under this Article has not been paid, as evidenced by a stamp, is guilty of a Class I felony.~~

~~(b) Notwithstanding any other provision of law, no prosecution for a violation of this Article shall be barred before the expiration of six years after the date of the violation.~~

"§ *105-113.110A. Interest and penalty.*

The tax due under this Article shall bear interest at the rate established pursuant to G.S. 105-241.1(i) from the date due until paid. In addition, a dealer who neglects, fails, or refuses to pay the tax due under this Article is liable for a penalty equal to ~~one hundred percent (100%)~~ fifty percent (50%) of the tax.

"§ *105-113.111. Assessments.*

~~(a)~~ Notwithstanding any other provision of law, an assessment against a dealer who possesses a controlled substance to which a stamp has not been affixed as required by this Article shall be made as provided in this section. The Secretary shall assess a tax, applicable penalties, and interest based on personal knowledge or information available to the Secretary. The Secretary shall notify the dealer in writing of the amount of the tax, penalty, and interest due, and demand its immediate payment. The notice and demand shall be either mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest immediately upon receipt of the notice and demand, the Secretary shall collect the tax, penalty, and interest pursuant to the procedure set forth in G.S. 105-241.1(g) for jeopardy assessments or the procedure set forth in G.S. 105-242, including causing execution to be issued immediately against the personal property of the ~~dealer~~ dealer, unless the dealer files with the Secretary a bond in the amount of the asserted liability for the tax, penalty, and interest. The Secretary shall use all means available to collect the tax, penalty, and interest from any property in which the dealer has a legal, equitable, or beneficial interest. The dealer may seek review of the assessment as provided in Article 9 of this Chapter.

~~(b) Reserved.~~

"§ *105-113.112. Confidentiality of information.*

Notwithstanding any other provision of law, information obtained pursuant to this Article is confidential and may not be disclosed or, unless independently obtained, used in a criminal prosecution other than a prosecution for a violation of this Article. Stamps issued pursuant to this Article may not be used in a criminal prosecution other than a prosecution for a violation of this Article. A person who discloses information obtained pursuant to this Article is guilty of a Class 1 misdemeanor. This section does not prohibit the Secretary from publishing statistics that do not disclose the identity of dealers or the contents of particular returns or reports.

"§ *105-113.113. Use of tax proceeds.*

(a) Special Account. -- The Secretary shall credit the proceeds of the tax levied by this Article to a special nonreverting account, to be called the State Controlled Substances Tax Account, until the tax proceeds are unencumbered. The Secretary shall remit the unencumbered tax proceeds as provided in this section on a quarterly or more frequent basis. Tax proceeds are unencumbered when either of the following occurs:

(1) The tax has been fully paid and the taxpayer has no current right under G.S. 105-267 to seek a refund.

(2) The taxpayer has been notified of the final assessment of the tax under G.S. 105-241.1 and has neither fully paid nor timely contested the tax under G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267.

~~the taxpayer no longer has a current right to challenge the assessment of the tax.~~

(b) Distribution. -- The Secretary ~~shall, on a quarterly basis, remit the unencumbered tax proceeds as follows:~~ shall remit seventy-five percent (75%) of the ~~amount~~ part of the unencumbered tax proceeds that was collected by assessment ~~shall be remitted~~ to the State or local law enforcement agency that conducted the investigation of a dealer that led to the ~~assessment; and the remainder of the unencumbered tax proceeds shall be credited to the General Fund.~~ assessment. If more than one State or local law enforcement agency conducted the investigation, the Secretary shall determine the equitable ~~pro rata~~ share for each agency based on the contribution each agency made to the investigation. The Secretary shall credit the remaining unencumbered tax proceeds to the General Fund.

(c) Refunds. -- The refund of a tax that has already been distributed shall be drawn initially from the State Controlled Substances Tax Account. The amount of refunded taxes that had been distributed to a law enforcement agency under this section and any interest shall be subtracted from succeeding distributions from the Account to that law enforcement agency. The amount of refunded taxes that had been credited to the General Fund under this section and any interest shall be subtracted from succeeding credits to the General Fund from the Account."

Sec. 2. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or

credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Sec. 3. The amendments to G.S. 105-113.113 made in this act become effective July 1, 1995, and apply to taxes collected on or after that date. The remainder of this act becomes effective October 1, 1995, and applies to substances acquired on or after that date.

In the General Assembly read three times and ratified this the 28th day of June, 1995.

H.B. 505 **CHAPTER 341**

AN ACT TO ALLOW THE CITIES OF GASTONIA, BELMONT, AND MOUNT HOLLY AND THE TOWN OF STANLEY TO MAKE CERTAIN ASSESSMENTS OUTSIDE THE CORPORATE LIMITS.

The General Assembly of North Carolina enacts:

Section 1. In exercising the authority granted under Article 16 of Chapter 160A of the General Statutes to extend and operate public enterprises outside the corporate limits, the governing body of a city or town shall specially assess all or part of the costs of constructing, reconstructing, extending, building, or improving water supply and distribution systems or sewage collection and disposal systems or both such systems or any part thereof, outside the corporate limits of the city or town against property benefited therefrom; provided, however, no special assessment shall be levied unless and until a valid petition for such improvements has been submitted to the city or town by the owners of the property affected. In order to be valid, the petition must be signed by at least a majority in number of the owners of property to be assessed, who must represent at least a majority of all of the lineal feet of frontage of the lands abutting the water or sewer improvement. Special assessments levied pursuant to this section shall be levied and collected in the same way and under the same authority and procedures as special assessments levied and collected by the city or town upon property within the corporate limits.

Notwithstanding the provisions of G.S. 160A-237, the resolution levying an assessment pursuant to this section may provide that, upon application to the governing body of the city or town, the assessment be held in abeyance without interest when the household income of a residence benefited by the improvements does not exceed the most recent poverty threshold set by the United States Department of Labor. An assessment that is held in abeyance under this section shall be held until the earliest of the following:

(1) Improvements on the assessed property are actually connected to the water and sewer system for which the assessment was levied and the improvements are working properly.
(2) The property benefited is transferred.
(3) A date certain not more than 20 years from the date of confirmation of the assessment roll.

The remaining provisions of G.S. 160A-237 shall govern the assessments held in abeyance.

Sec. 2. This act applies only to the Cities of Belmont, Gastonia, and Mount Holly and the Town of Stanley.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1995.

S.B. 339

CHAPTER 342

AN ACT TO GRANT ADDED POWERS TO THE STANLY AIRPORT AUTHORITY RELATED TO CONSTRUCTING AN INDUSTRIAL PARK.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 419 of the 1971 Session Laws is amended by adding new subsections to read:

"(15) To acquire property for the purpose of establishing an industrial park on the property and, consistent with the zoning of the property, to establish, construct, control, lease, equip, improve, maintain, and operate an industrial park on property owned by the Airport Authority.

(16) To construct, maintain, operate, and control any utility lines, pipes, or stations necessary to provide an industrial park located on Airport Authority property with utility services and to contract with any suppliers of utilities for those utility services."

Sec. 2. Section 7 of Chapter 419 of the 1971 Session Laws reads as rewritten:

"*Sec. 7.* Private property needed by said Airport Authority for any airport, landing field or facilities of same may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of the power of eminent domain, pursuant to the provisions of Chapter 40 40A of the General Statutes of North Carolina, as amended. When the Airport Authority files a complaint to condemn property for the purpose of establishing an industrial park on the property, title to the property and the right to immediate possession of the property vests in the Airport Authority when the complaint is filed and the Airport Authority deposits the value of the property in accordance with G.S. 40A-41, unless the owner of the property initiates an action for injunctive relief."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

S.B. 637

CHAPTER 343

AN ACT TO REPEAL THE HENDERSONVILLE FIREMEN'S SUPPLEMENTAL RETIREMENT FUND.

The General Assembly of North Carolina enacts:

Section 1. Chapter 341 of the 1981 Session Laws is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

S.B. 642 **CHAPTER 344**

AN ACT TO UPDATE THE FEE STRUCTURE OF THE NORTH CAROLINA BOARD FOR SOCIAL WORK.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90B-6(f) reads as rewritten:

"(f) The Board shall establish and receive fees not to exceed fifty dollars ($50.00) for initial or renewal ~~application, not to exceed one hundred dollars ($100.00) for examination, and not to exceed fifteen dollars ($15.00) for late renewal, maintain Board accounts of all receipts,~~ application. Fees for the national written examination shall be the cost of the examination to the Board plus an additional fee not to exceed fifty dollars ($50.00). The fee for late renewal shall not exceed fifteen dollars ($15.00). The Board shall maintain accounts of all receipts and make expenditures from Board receipts for any purpose which is reasonable and necessary for the proper performance of its duties under this Chapter."

Sec. 2. This act becomes effective July 1, 1995, and applies to fees due on or after that date.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

S.B. 694 **CHAPTER 345**

AN ACT TO REPEAL THE GOLDSBORO FIREMEN'S SUPPLEMENTAL PENSION FUND.

The General Assembly of North Carolina enacts:

Section 1. Chapter 464 of the 1963 Session Laws is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

H.B. 437 **CHAPTER 346**

AN ACT TO PROVIDE FOR THE STATE OF NORTH CAROLINA TO ESTABLISH A STATE VETERANS HOME PROGRAM IN THE DIVISION OF VETERANS AFFAIRS OF THE DEPARTMENT OF ADMINISTRATION.

Whereas, there are more than 700,000 veterans in North Carolina, of whom more than 200,000 are 65 years of age or older, with the percentage of older veterans projected to grow significantly in the future; and

Whereas, the General Assembly authorized the Veterans Home Study Commission to conduct an independent study to determine the feasibility of constructing a State Veterans Home which, after due consideration,

determined that the construction of a home was not only feasible, but also necessary because of the aging veteran population; and

Whereas, a study commissioned by the 1992 General Assembly concurred with the results of the study conducted by the Veterans Home Study Commission in projecting the need for a skilled nursing care bed State Veterans Home on a site adjacent to the Fayetteville Veterans Administration Medical Center; and

Whereas, the General Assembly finds and determines that there currently exists a significant need for health, nursing, and medical rehabilitative facilities for those residents of this State who have served their State and nation in the Armed Forces; and

Whereas, the General Assembly further finds and determines that to meet this need there should be established a State Veterans Home program to provide nursing home care to veterans who are residents of North Carolina; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 165 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 8.

"State Veterans Home.

"§ 165-45. *Short Title.*

This Article may be referred to as the 'State Veterans Home Act'.

"§ 165-46. *Establishment.*

The State of North Carolina shall construct, maintain, and operate veterans homes for the aged and infirm veterans resident in this State under the administrative authority and control of the Division of Veterans Affairs of the Department of Administration. There is vested in such Division any and all powers and authority that may be necessary to enable it to establish and operate the homes and to issue rules necessary to operate the homes in compliance with applicable State and federal statutes and regulations.

"§ 165-47. *Exemption from certificate of need.*

Any state veterans home established by the Division of Veterans Affairs shall be exempt from the certificate of need requirements as set out in Article 9 of Chapter 131E, or as may be hereinafter enacted.

"§ 165-48. *North Carolina Veterans Home Trust Fund.*

(a) Establishment. -- A trust fund shall be established in the State treasury, for the Division of Veterans Affairs, to be known as the North Carolina Veterans Home Trust Fund.

(b) Composition. -- The trust fund shall consist of all funds and monies received by the Veterans Affairs Commission or the Division of Veterans Affairs from the United States, any federal agency or institution, and any other source, whether as a grant, appropriation, gift, contribution, bequest or individual reimbursement, for the care and support of veterans who have been admitted to a State veterans home.

(c) Use of Fund. -- The trust fund created in subsection (a) of this section shall be used by the Division of Veterans Affairs:

(1) To pay for the care of veterans in said State veterans homes;

(2) To pay the general operating expenses of the State veterans homes, including the payment of salaries and wages of officials and employees of said homes; and

(3) To remodel, repair, construct, modernize, or add improvements to buildings and facilities at the homes.

(d) Miscellaneous. -- The following provisions apply to the trust fund created in subsection (a) of this section:

(1) All funds deposited and all income earned on the investment or reinvestment of such funds shall be credited to the trust fund.

(2) Any monies remaining in the trust fund at the end of each fiscal year shall remain on deposit in the State treasury to the credit of the North Carolina Veterans Home Trust Fund.

(3) Nothing contained herein shall prohibit the establishment and utilization of special agency accounts by the Division of Veterans Affairs, as may be approved by the Veterans Affairs Commission, for the receipt and disbursement of personal funds of the State veterans homes' residents or for receipt and disbursement of charitable contributions for use by and for residents.

"*§ 165-49. Funding.*

(a) The Division of Veterans Affairs of the Department of Administration may apply for and receive federal aid and assistance from the United States Department of Veterans Affairs or any other agency of the United States Government authorized to pay federal aid to states for the construction and acquisition of veterans homes under Title 38, United States Code, section 8131 et seq., or for the care or support of disabled veterans in State veterans homes under Title 38, United Stated Code, section 1741 et seq., or from any other federal law for said purposes.

(b) The Division of Veterans Affairs may receive from any source any gift, contribution, bequest, or individual reimbursement, the receipt of which does not exclude any other source of revenue.

(c) All funds received by the Division shall be deposited in the North Carolina Veterans Home Trust Fund, except for any funds deposited into special agency accounts established pursuant to G.S. 165-48(d)(3). The Veterans Affairs Commission shall authorize the expenditure of all funds from the North Carolina Veterans Home Trust Fund.

"*§ 165-50. Contracted operation of homes.*

The Veterans Affairs Commission may contract with persons or other nongovernmental entities to operate each State veterans home. Contracts for the procurement of services to manage, administer, and operate any State veterans home shall be awarded on a competitive basis through the solicitation of proposals and through the procedures established by statute and the Division of Purchase and Contract. A contract may be awarded to the vendor whose proposal is most advantageous to the State, taking into consideration cost, program suitability, management plan, excellence of program design, key personnel, corporate or company resources, financial condition of the vendor, experience and past performance, and any other qualities deemed necessary by the Veterans Affairs Commission and set out in the solicitation for proposals. Any contract awarded under this section shall not exceed five years in length. The Veterans Affairs Commission is

not required to select or recommend the vendor offering the lowest cost proposal but shall select or recommend the vendor who, in the opinion of the Commission, offers the proposal most advantageous to the veterans and the State of North Carolina.

"§ 165-51. *Program staff.*

The Division shall appoint and fix the salary of an Administrative Officer for the State veterans home program. The Administrative Officer shall be an honorably discharged veteran who has served in active military service in the armed forces of the United States for other than training purposes. The Administrative Officer shall direct the establishment of the State veterans home program, coordinate the master planning, land acquisition, and construction of all State veterans homes under the procedures of the Office of State Construction, and oversee the ongoing operation of said veterans homes. The Administrative Officer may hire one office assistant to help with clerical responsibilities.

"§ 165-52. *Admission and dismissal authority.*

The Veterans Affairs Commission shall have authority to determine administrative standards for admission and dismissal, as well as the medical conditions, of all persons admitted to and dismissed from any State veterans home, and to issue any necessary rules, subject to the requirements set out in G.S. 165-53.

"§ 165-53. *Eligibility and priorities.*

(a) To be eligible for admission to a State veterans home, an applicant shall meet the following requirements:

(1) The veteran shall have served in the active armed forces of the United States for other than training purposes;

(2) The veteran shall have been discharged from the armed forces under conditions other than dishonorable;

(3) The veteran shall be disabled by age, disease, or other reason as determined through a physical examination by a State veterans home physician; and

(4) The veteran shall have resided in the State of North Carolina for two years immediately prior to the date of application.

(b) Eligible veterans will be admitted into a State veterans home or place on waiting lists for admission into a home according to the following priorities:

(1) Eligible wartime veterans will receive priority over eligible nonwartime veterans and will be admitted to the first available bed capable of providing the level of care required. Eligible wartime veterans with equal care requirements will be ranked in chronological order based on the earliest date of receipt of the veteran's application for care.

(2) All other eligible veterans will be ranked in chronological order based on the earliest date of receipt of the veteran's application for care. If more than one application is received on the same date, the Administrative Officer will determine their sequential order on the list according to medical need.

(c) Nonveterans may occupy no more than twenty-five percent (25%) of the total beds in a State veterans home. When any space is available for

nonveterans, priority will be established for the following relatives of eligible veterans in the following order:

(1) Spouse.

(2) Widow or widower whose spouse, if living, would be an eligible veteran.

(3) Gold Star parents, defined as the mother or father of a veteran who died an honorable death while in active service to the United States during time of war or emergency.

"§ *165-54. Deposit required.*

Each resident of any State veterans home shall pay to the Division of Veterans Affairs the cost of maintaining his or her residence at the home. This deposit shall be placed in the North Carolina Veterans Home Trust Fund and shall be in an amount and in the form prescribed by the Veterans Affairs Commission in consultation with the Assistant Secretary for Veterans Affairs.

"§ *165-55. Report and budget.*

(a) The Assistant Secretary for Veterans Affairs shall report annually to the Secretary of the Department of Administration on the activities of the State Veterans Homes Program. This report shall contain an accounting of all monies received and expended, statistics on residents in the homes during the year, recommendations to the Secretary, the Governor, and the General Assembly as to the program, and such other matters as may be deemed pertinent.

(b) The Assistant Secretary for Veterans Affairs, with the approval of the Veterans Affairs Commission, shall compile an annual budget request for any State funding needed for the anticipated costs of the homes, which shall be submitted to the Secretary of the Department of Administration. State appropriated funds for operational needs shall be made available only in the event that other sources are insufficient to cover essential operating costs."

Sec. 2. G.S. 147-69.2(a) is amended by adding a new subdivision to read:

"(17.1) North Carolina Veterans Home Trust Fund."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

H.B. 552 **CHAPTER 347**

AN ACT TO CLOSE A LOOPHOLE IN THE MINIMUM HOUSING STANDARDS ACT AS IT APPLIES TO LARGE URBAN CITIES WHERE THE OWNER OF SUBSTANDARD PROPERTY CAN AVOID ORDERS TO REPAIR, REMOVE, OR DEMOLISH THE UNIT BY SIMPLY CLOSING IT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-443(5a) reads as rewritten:

"(5a) If the governing body shall have adopted an ordinance, or the public officer shall ~~have~~ have:

a. In a municipality located in counties which have a population in excess of 163,000 by the last federal census, other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or ~~order,~~ order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of 163,000 by the last federal census."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

H.B. 574 **CHAPTER 348**

AN ACT TO INCORPORATE THE TOWN OF LAND HARBOR.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Land Harbor is enacted to read:

"CHARTER OF THE TOWN OF LAND HARBOR.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. *Incorporation and Corporate Powers.* The inhabitants of the Town of Land Harbor are a body corporate and politic under the name 'Town of Land Harbor'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"Sec. 1.2. *Map.* An official map of the Town, showing the current boundaries, is maintained permanently in the office of the Town Clerk and is available for public inspection. A true copy of such shall be filed in the office of the Avery County Register of Deeds.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. *Town Boundaries.* Until modified in accordance with law the boundaries of the Town of Land Harbor are as follows:

Beginning at a nail and cap, centerline of U.S. Highway 221; thence from the beginning N 52°28' E, 585.80' to an iron; thence N 67°31' E, 232.20'; thence N 67°31' E, 265.00'; thence N 40°34'E, 906.00; thence N 60°31'E, 547.30' to an iron at 15" poplar; thence N 72°03'E, 334.06'; thence N 36°42'E, 158.95'; thence N 68°47'E, 213.09; thence S 18°11'E, 319.87; thence S 42°04'E, 238.04; thence S 52°47'E, 280.64'; thence S 21°58'E, 205.06'; thence S 03°01'W, 257.13'; thence S 08°29'E, 450.97'; thence S 08°57'W, 189.95'; thence S 42°54'E, 189.32' to an iron at 20" white oak; thence S 75°20'E, 968.20' to an iron at 18" red oak; thence S 01°36'W, 1703.01' to a 30" maple; thence N 76°59'W, 650.53' to a stake set at 10" maple; thence N 21°45'W, 1363.16' to a "x" on rock; thence N 85°35'W, 1108.74' to an iron; thence S 24°39'E, 1395.36' to an iron; thence S 12°51'W, 877.84' to an iron; thence N 87°41'W, 667.74' to an iron; thence N 03°30'E, 563.40' to an iron; thence N 85°51'W, 2026.50' to cap and nail centerline of U.S. Highway 221; thence N 09°29'E, 318.50' to centerline of U.S. Highway 221; thence S 82°00'W, 33.24'; thence S 20°00'W, 320.33'; thence N 84°34'W, 80.00' to the corner to Evans; thence N 82°53'W, 174.08' to an iron; thence N 85°06'W, 816.42; thence N 85°09'W, 531.49' to an iron;

thence N 87°10'W, 349.22'; thence N 26°11'W, 138.56'; thence S 88°27'W, 236.49'; thence S 88°49'W, 644.42' to the centerline of NCSR 1501; thence following the centerline of NCSR 1501 the following bearings and distances; N 40°08'W, 72.59'; thence N 60°21'W, 60.46'; thence S 82°28'W, 174.78'; thence N 81°37'W, 199.72'; thence N 73°36'W, 199.21'; thence N 29°40'W, 67.53'; thence N 10°15'W, 188.84' thence leaving NCSR 1501 and running N 43°39'W, 137.58' to an oak tree; thence N 59°40'W, 2694.42'to the centerline of a private road; thence N 39°22'E, 156.15'; thence N 25°04'E, 175.99'; thence N 44°23'E, 176.17'; thence N 08°34'E, 56.93'; thence N 17°26'W, 40.36'; thence N 50°52'W, 38.43'; thence S 88°07'W, 34.00'; thence S 72°00'W, 122.05'; thence S 76°14'W, 51.40'; thence N 80°31'W, 33.65'; thence N 57°27'W, 130.21'; thence N 61°17'W, 91.95'; thence N 57°19'W, 77.38'; thence N 33°54'W, 30.00'; thence N 15°14'W, 51.57'; thence N 03°38'W, 123.43'; thence N 27°47'W, 38.93'; thence N 69°14'W, 32.87'; thence S 72°41'W, 39.53'; thence S 52°58'W, 44.93'; thence S 66°42'W, 79.71'; thence S 79°00'W, 52.89'; thence N 78°27'W, 77.67'; thence N 86°25'W, 83.50'; thence N 83°17'W, 48.95'; thence N 61°20'W, 30.84'; thence N 24°36'W, 36.80', thence N 15°25'E, 28.36'; thence N 35°38'E, 108.29'; thence N 12°33'E, 30.45'; thence N 10°12'W, 43.92' ; thence leaving private road N 29°26'E, 291.17'to a railroad iron; thence N 15°47'E, 354.60' ; thence N 06°21'W, 169.71'; thence N 16°53'W, 79.51'; thence N 04°51'W, 182.84'; thence N 24°36'W, 290.51'; thence N 06°24'E, 191.95' to an iron; thence N 17°11'E, 113.09'; thence N 32°19'E, 146.97'; thence N 33°43'E, 97.26'; thence N 17°51'E, 171.63'; thence N 00°41'W, 108.20'; thence N 11°27'W, 354.03'; thence S 88°27'W, 917.66'; thence N 04°52' E, 1750.47'; thence S 88°56E, 920.30' to a railroad iron; thence 03°22'W, 293.05'; thence S 11°03'W, 504.23'; thence S 06°06'W, 381.49'; thence S 03°31'E, 274.23'; thence Due East 4023.37'; thence N 89°08'E, 930.15'to a railroad iron; thence N 02°08'E, 639.94'to a railroad iron; thence S 87°58'E, 658.09'to a railroad iron; thence S 03°05'W, 3537.49'to a hemlock; thence S 85°45'E, 623.05'to a cucumber; thence S 00°54'E, 190.08' to an iron; thence S 77°00'E, 241.60' to an iron; thence S 21°42' E, 176.90' to an iron; thence N 89°25'E, 359.62'to an iron; thence S 11°10'E, 605.68' to the point of beginning as shown on survey by Walter H. Burkett, RLS L-1209, dated July 14, 1972 and recorded in Plat Book 4, page 97 and 98, Avery County Registry.

Excepting and reserving from the above description the following parcels with any reference to Plat Book or Deed Book being to the Avery County Registry:

PARCEL 1: 8.19 acres, Ila V. Ledford property as shown on Plat Book 4, page 97 to which reference is made for a more complete description.

PARCEL 2: 0.99 acres, Clark Cemetery, as shown on Plat Book 4, page 97 to which reference is made for a more complete description.

PARCEL 3: Deed Book 123, page 1069 to which reference is made for a more complete description.

PARCEL 4: 0.75 acres, Deed Book 196, page 927 to which reference is made for a more complete description.

PARCEL 5: 1.11 acres, Deed Book 190, page 115 to which reference is made for a more complete description.

PARCEL 6: 52.08 acres, Deed Book 154, page 1516 to which reference is made for a more complete description.

PARCEL 7: 200.41 acres less exceptions, Deed Book 198, page 1108 to which reference is made for a more complete description.

PARCEL 8: Deed Book 165, page 200 to which reference is made for a more complete description. For further reference see Deed Book 144, page 425.

PARCEL 9: 24.38 acres, Deed Book 170, page 319 to which reference is made for a more complete description.

PARCEL 10: All property shown on Plat Book 6, page 22 and designated as Linville Estates.

PARCEL 11: 1.942 acres, Deed Book 224, page 375 to which reference is made for a more complete description.

"Sec. 2.2. *Extraterritorial jurisdiction.* The Town may not exercise any extraterritorial jurisdiction or extraterritorial powers under Article 19 of Chapter 160A of the General Statutes.

"Sec. 2.3. *Annexation.* The Town may not annex under Part 2 of Article 4A of Chapter 160A of the General Statutes.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. *Structure of Governing Body; Number of Members.* The governing body of the Town of Land Harbor is the Town Council, which has five members.

"Sec. 3.2. *Manner of Electing Council.* The qualified voters of the entire Town elect the members of the Council.

"Sec. 3.3. *Term of Office of Council Members.* Members of the Council are elected to four-year terms except that of those elected at the initial election in 1995, the three highest vote getters who are elected shall serve for four-year terms and the next two highest vote getters shall serve for two-year terms. In 1997 and quadrennially thereafter, two members of the Council shall be elected for four-year terms. In 1999 and quadrennially

thereafter, three members of the Council shall be elected for four-year terms.

"Sec. 3.4. *Selection of Mayor; Term of Office.* The Mayor shall be elected by the Council from among its membership to serve at its pleasure. The Mayor has the right to vote on all matters before the Council.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. *Conduct of Town Elections.* Town elections shall be conducted on a nonpartisan basis, and the results determined by plurality as provided in G.S. 163-292. Elections shall be conducted by the Avery County Board of Elections.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. The Town of Land Harbor shall operate under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Sec. 2. Until the organizational meeting of the Town Council of Land Harbor following the 1995 municipal election, Harold R. McCroskey, Pamela Sabella, Robert B. Thompson, Donald E. Voorhees, and William P. Wakefield shall serve as members of the Town Council. In the event of a vacancy on the Council, the Council shall appoint a qualified person to fill such vacancy until the organizational meeting. The initial meeting of the Town Council shall be called by the Mayor.

Sec. 3. (a) From and after the effective date of this act, the citizens and property in the Town of Land Harbor shall be subject to municipal taxes levied for the year beginning July 1, 1995, and for that purpose the Town shall obtain from Avery County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1995; and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance.

(b) The Town may adopt a budget ordinance for fiscal year 1995-96 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1995-96, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1995.

Sec. 4. At a date in August of 1995 established by the Board of Commissioners of Avery County, the Avery County Board of Elections shall conduct a special election for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Land Harbor, the question of whether or not such area shall be incorporated as the Town of Land Harbor; provided that the Board of Commissioners of Avery County may, by ordinance, provide that there shall be no election on incorporation, in which case Sections 1 through 3 of this act have no force and effect. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

Sec. 5. In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Incorporation of the Town of Land Harbor".

Sec. 6. In the election, if a majority of the votes are cast "For incorporation of the Town of Land Harbor", Sections 1 through 3 of this act shall become effective on the date that the Avery County Board of Elections certifies the results of the election. Otherwise, those sections shall have no force and effect.

Sec. 7. If a majority of the voters approve the incorporation of Land Harbor, the election of the Town Council shall take place at an election held on November 7, 1995. The Avery County Board of Elections shall establish a special candidate filing period in lieu of that provided by Chapter 163 of the General Statutes.

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

H.B. 768 **CHAPTER 349**

AN ACT TO PROVIDE THAT THE HIGHWAY USE TAX TRADE-IN ALLOWANCE APPLIES WHEN TWO CARS ARE EXCHANGED FOR ONE ANOTHER.

The General Assembly of North Carolina enacts:

Section 1. G. S. 105-187.3(b) reads as rewritten:

"(b) Retail Value. -- The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a retailer is the sales price of the motor vehicle, including all accessories attached to the vehicle when it is delivered to the purchaser, less the amount of any allowance given by the retailer for a motor vehicle taken in trade as a full or partial payment for the purchased motor vehicle. The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a seller who is not a retailer is the market value of the vehicle, less the amount of any allowance given by the seller for a motor vehicle taken in trade as a full or partial payment for the purchased motor vehicle. A transaction in which two parties exchange motor vehicles is considered a sale regardless of whether either party gives additional consideration as part of the transaction. The retail value of a motor vehicle for which a certificate of title is issued because of a reason other than the sale of the motor vehicle is the market value of the vehicle. The market value of a vehicle is presumed to be the value of the vehicle set in a schedule of values adopted by the Commissioner."

Sec. 2. This act becomes effective July 1, 1995, and applies to certificates of title issued on or after that date.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

H.B. 1058 **CHAPTER 350**

AN ACT TO MAKE CONFORMING CHANGES TO THE TAX LAW IN LIGHT OF FEDERAL LAW PREEMPTING STATE REGULATION OF MOST MOTOR FREIGHT CARRIERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-333(10) reads as rewritten:

"(10) 'Motor freight carrier company' means a ~~public service~~ company engaged in the business of transporting property by motor vehicle for hire over the public highways of this State as ~~herein provided:~~ provided in this subdivision:

a. As to interstate carrier companies domiciled in North Carolina, this ~~definition shall include~~ term includes carriers who regularly transport property by tractor trailer to or from one or more terminals owned or leased by the carrier outside this State or two or more terminals inside this State. For purposes of appraisal and allocation only, the ~~definition shall also include~~ term also includes a North Carolina interstate carrier ~~which~~ that does not have a terminal outside this State but whose operations outside the State are sufficient to require the payment of ad valorem taxes on a portion of the value of the rolling stock of ~~such~~ the carrier to taxing units in one or more other states.

b. As to interstate carrier companies domiciled outside this State, this ~~definition shall include~~ term includes carriers who regularly transport property by tractor trailer to or from one or more terminals owned or leased by the carrier inside this State.

c. As to intrastate carrier companies, this ~~definition shall include~~ term includes only those carriers ~~which~~ that are engaged in the transportation of property by tractor trailer to or from two or more terminals owned or leased by the carrier in this State."

Sec. 2. G.S. 105-333(14) reads as rewritten:

"(14) 'Public service company' means railroad company, pipeline company, gas company, electric power company, electric membership corporation, telephone company, telegraph company, bus line company, ~~motor freight carrier company,~~ airline company, and any other company performing a public service that is regulated by the Interstate Commerce Commission, the Federal Power Commission, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities ~~Commission except~~ Commission, except that the term does not include a water company, a radio common carrier company as defined in G.S. 62-119(3), a cable television company, or a radio or television broadcasting company. The term also includes a motor freight carrier company. ~~(For~~ For purposes of appraisal under this Article,

~~this definition shall include~~ the term also includes a pipeline company whether or not it performs a public service and whether or not it is regulated by one of the regulatory agencies named in ~~the preceding sentence).~~ this subdivision."

Sec. 3. G.S. 105-130.4(a)(6) reads as rewritten:

"(6) 'Public utility' means any corporation ~~which~~ that is subject to control of one of more of the following entities: the North Carolina Utilities ~~Commission and/or~~ Commission, the Federal Communications Commission, the Interstate Commerce Commission, the Federal Power ~~Commission and~~ Commission, or the Federal Aviation ~~Agency~~ Agency; and ~~which~~ that owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, the transportation of goods or persons, or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, oil, oil products, or gas. The term also includes a motor carrier of property whose principal business activity is transporting property by motor vehicle for hire over the public highways of this State."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

H.B. 473 **CHAPTER 351**

AN ACT TO MAKE PROCEDURAL CHANGES AND TECHNICAL CORRECTIONS TO THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT, TO ALLOW RETROACTIVE INDEMNIFICATION OF A MANAGER OR MEMBER OF A LIMITED LIABILITY COMPANY, TO EXTEND THE USURY EXEMPTION TO LIMITED LIABILITY COMPANIES AND PARTNERSHIPS, TO AMEND THE PROFESSIONAL CORPORATION ACT, AND TO MAKE CONFORMING CHANGES TO THE REAL ESTATE LICENSE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 57C-1-03(14) reads as rewritten:

"(14) Member. -- A person who has been admitted to membership in the limited liability company as provided in G.S. 57C-3-01 until the person's membership ceases as provided in ~~G.S. 57C-3-02,~~ G.S. 57C-3-02 or G.S. 57C-5-02."

Sec. 2. G.S. 57C-1-03(17) reads as rewritten:

"(17) Person. -- An individual, a trust, an estate, or a domestic ~~corporation, a~~ or foreign corporation, a domestic or foreign professional corporation, a domestic or foreign partnership, a domestic or foreign limited partnership, a domestic or foreign limited liability company, ~~a foreign limited liability company,~~ an unincorporated association, or another entity."

Sec. 3. G.S. 57C-2-30(e) reads as rewritten:

"(e) Neither the reservation nor registration of a name, the organization of a limited liability company, nor the obtaining by a foreign limited liability company of a certificate of authority shall authorize the use in this State of a name in violation of the rights of any third party under the federal trademark act, the trademark act of this State, or other statutory or common law, or be a defense to an action for violation of ~~any such~~ those rights."

Sec. 4. G.S. 57C-2-41 is amended by adding a new subsection to read:

"(c) A limited liability company may change its registered office or registered agent by including in its annual report required by G.S. 57C-2-23 the information and any written consent required by subsection (a) of this section."

Sec. 5. G.S. 57C-3-02(7) reads as rewritten:

"(7) Unless otherwise provided in the articles of organization or a written operating agreement or with the consent of all other members, in the case of a member that is a domestic or foreign ~~partnership~~ partnership, a domestic or foreign limited partnership, or another domestic or foreign limited liability company, the dissolution and commencement of winding up of the ~~partnership~~ partnership, limited partnership, or limited liability company;".

Sec. 6. G.S. 57C-3-02(8) reads as rewritten:

"(8) Unless otherwise provided in the articles of organization or a written operating agreement or with the consent of all other members, in the case of a member that is a domestic or foreign corporation, the dissolution of the corporation or the revocation of its charter; or".

Sec. 7. G.S. 57C-3-21(3) reads as rewritten:

"(3) Upon designation as manager in a written operating agreement and the person's consent to such designation, the designated person shall serve as manager until the earliest to occur of (i) the person's resignation, (ii) any event described in ~~G.S. 57C-3-02(3)~~ G.S. 57C-3-02 with respect to the manager, (iii) any event specified in the articles of organization or written operating agreement that results in a manager ceasing to be a manager, or (iv) the amendment of the written operating agreement removing the person's designation as a manager."

Sec. 8. G.S. 57C-3-32(a)(2) reads as rewritten:

"(2) ~~If approved by all the members, provide~~ Provide for indemnification of a manager or member for judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which the member or manager is a party because he is or was a manager or member. For purposes of this subdivision, the words 'expenses', 'proceeding', and 'party' shall have the meanings set forth in G.S. 55-8-50(b)."

Sec. 9. G.S. 57C-3-32(b) reads as rewritten:

"(b) No provision permitted under subsection (a) of this section shall limit, eliminate, or indemnify against the liability of a manager for (i) acts or omissions that the manager knew at the time of the acts or omissions were clearly in conflict with the interests of the limited liability company,

(ii) any transaction from which the manager derived an improper personal benefit, or (iii) acts or omissions occurring prior to the date the provision became ~~effective.~~ effective, except that indemnification pursuant to subdivision (2) of subsection (a) of this section may be provided if approved by all the members. As used in this subsection, 'improper personal benefit' does not include reasonable compensation or other reasonable incidental benefit for or on account of service as a manager, an officer, an employee, an independent contractor, an attorney, or a consultant of the limited liability company.

No provision permitted under subsection (a) of this section shall limit or eliminate the liability of a member or manager for any taxes owed by the limited liability company under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes."

Sec. 10. Article 5 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"*§ 57C-5-07. Distribution upon withdrawal.*

Except as provided in this Article, upon withdrawal, any withdrawing member is entitled to receive any distribution to which he is otherwise entitled under the articles of organization or a written operating agreement, or, if not otherwise provided in the articles of organization or a written operating agreement, upon a reasonable time after withdrawal, the fair value of the member's interest in the limited liability company as of the date of withdrawal based upon the member's right to share in distributions from the limited liability company."

Sec. 11. G.S. 57C-6-02(a) reads as rewritten:

"(a) On application by or for a member, the court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or an operating agreement. The clerk of court shall deliver a certified copy of the decree to the Secretary of State, who shall file it."

Sec. 12. G.S. 57C-6-01(4) reads as rewritten:

"(4) Unless otherwise provided in the articles of organization or a written operating agreement, the happening of any event of withdrawal described in G.S. 57C-3-02 (cessation of membership) with respect to any member, unless at the time of the event of withdrawal (i) there is at least one remaining member, (ii) the provisions of the articles of organization or a written operating agreement permit the business of the limited liability company to be carried on by the remaining member or members, and (iii) the remaining member or members elect to do so pursuant to such vote, to procedures prescribed in the articles of organization or a written operating agreement, or, in the absence of prescribed voting requirements or procedures, by a unanimous vote of the remaining member or members taken after the event of withdrawal. The foregoing to the contrary notwithstanding, a limited liability company shall not be dissolved and is not required to be wound up by reason of any event of withdrawal if, within 90 days after the event of withdrawal, all remaining ~~members, and the person or persons with respect to whom the event of withdrawal~~

~~has occurred (or his successor),~~ members agree in writing that the business of the limited liability company may be continued; or".

Sec. 13. G.S. 24-9 reads as rewritten:

"*§ 24-9. Loans to ~~corporations~~ certain entities organized for profit not subject to claim or defense of usury.*

Notwithstanding any other provision of this Chapter or any other provision of law, any foreign or domestic ~~corporation~~ corporation, limited liability company, or partnership substantially engaged in ~~commercial, manufacturing or industrial~~ commercial pursuits for pecuniary gain may agree to pay, and any lender or other person may charge and collect from ~~such corporation, interest~~ the entity, interest, fees, and other charges at any rate which ~~such corporation~~ the entity may agree or be required to pay ~~in writing,~~ and as to any such transaction the claim or defense of usury by ~~such corporation~~ the entity and its successors or anyone else in its behalf is prohibited."

Sec. 14. G.S. 24-9.2 is repealed.

Sec. 15. G.S. 55B-4(2) reads as rewritten:

"(2) All of the shares of stock of the corporation shall be owned and held by a licensee, or licensees, as hereinabove defined in ~~G.S. 55B-2(2).~~ G.S. 55B-2(2), ~~Provided, that as to professional corporations rendering services as defined in Chapters 83A, 89A, 89C, and 89E, limited ownership of shares by non-licensees shall be permitted as set forth~~ except as otherwise permitted in G.S. 55B-6."

Sec. 16. G.S. 55B-6(a) reads as rewritten:

"(a) Except as provided in subsection (b), a professional corporation may issue shares of its capital stock only to a licensee as defined in G.S. 55B-2, and a shareholder may voluntarily transfer such shares of stock issued to him only to another such licensee. No share or shares of any stock of such corporation shall be transferred upon the books of the corporation unless the corporation has received a certification of the appropriate licensing board that the transferee of such shares is a licensee. Provided, it shall be lawful in the case of professional corporations rendering services as defined in Chapters 83A, 89A, 89C, and 89E, for non-licensed employees of such corporation to own not more than one-third of the total issued and outstanding shares of such corporation. Provided further, subject to any additional conditions that the appropriate licensing board may by rule or order impose in the public interest, it shall be lawful for individuals who are not licensees but who perform professional services on behalf of a professional corporation in another jurisdiction in which the corporation maintains an office, and who are duly licensed to perform professional services under the laws of the other jurisdiction, to be shareholders of the corporation so long as there is at least one shareholder who is a licensee as defined in G.S. 55B-2, and the corporation renders its professional services in the State only through those shareholders that are licensed in North Carolina. Upon the transfer of any shares of such corporation to a non-licensed employee of such corporation, the corporation shall inform the appropriate licensing board of the name and address of the transferee and the number of shares issued to such nonprofessional transferee. Any share

of stock of such corporation issued or transferred in violation of this section shall be null and void. No shareholder of a professional corporation shall enter into a voting trust agreement or any other type of agreement vesting in another person the authority to exercise the voting power of any or all of his stock."

Sec. 17. G.S. 55B-13 reads as rewritten:

"*§ 55B-13. Suspension or revocation of certificate of registration.*

A licensing board may suspend or revoke a certificate of registration issued by it to a domestic or foreign professional corporation for any of the following reasons:

(1) Upon the failure of such corporation to promptly remove or discharge an officer, director, shareholder or employee who becomes disqualified by reason of the revocation or suspension of his license to practice; or

(2) Upon a finding by the licensing board that the professional corporation has failed to comply with the provisions of this Chapter or the regulations of the licensing board.

Upon the suspension or revocation of a certificate of registration issued to a professional corporation, such corporation shall cease forthwith to render professional services, and the Secretary of State shall be notified to the end that the corporation may be removed from active status and remain as such until reinstatement."

Sec. 18. Chapter 55B of the General Statutes is amended by adding a new section to read:

"*§ 55B-16. Foreign professional corporations.*

(a) A foreign professional corporation may apply for a certificate of authority to transact business in this State pursuant to the provisions of this Chapter and Chapter 55 of the General Statutes provided that:

(1) The corporation obtains a certificate of registration from the appropriate licensing board or boards in this State;

(2) With respect to each professional service practiced through the corporation in this State, at least one director and one officer shall be a licensee of the licensing board which regulates the profession in this State;

(3) Each officer, employee, and agent of the corporation who will provide professional services to persons in this State shall be a licensee of the appropriate licensing board in this State;

(4) The corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the appropriate licensing board or boards in this State;

(5) The corporation's activities in this State shall be limited as provided by G.S. 55B-14; and

(6) The application for certificate of authority, in addition to the requirements of G.S. 55-15-03, shall set forth the personal services to be rendered by the foreign professional corporation and the individual or individuals who will satisfy the requirements of G.S. 55B-16(a)(2) and shall be accompanied by a certification by the appropriate licensing board that each individual is a 'licensee' as defined in G.S. 55B-2(2) and by additional certifications as may

be required to establish that the corporation is a 'foreign professional corporation' as defined in G.S. 55B-16(b).

(b) For purposes of this section, 'foreign professional corporation' means a corporation for profit that is incorporated under a law other than the law of this State for the sole and specific purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in G.S. 55B-2(6) and that (i) has as its shareholders only individuals who are duly licensed, in this State or some other state, to render the same professional services as the corporation, or (ii) is organized for the purpose of rendering professional services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, and has as its shareholders only individuals who are duly licensed, in this State or in another state, to render the same professional services as the corporation or who are nonlicensed employees of the corporation, provided that nonlicensed employees own not more than one-third of the total issued and outstanding shares of the corporation, or (iii) is described in G.S. 55B-15.

(c) A foreign professional corporation with a valid certificate or authority has the same but no greater rights and has the same but no greater privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic professional corporation of like character, except that the provisions of G.S. 55B-6 and G.S. 55B-7 shall not apply."

"Sec. 19. G.S. 93A-1 reads as rewritten:

"*§ 93A-1. License required of real estate brokers and real estate salesmen.*

From and after July 1, 1957, it shall be unlawful for any person, partnership, ~~association or corporation~~ corporation, limited liability company, association, or other business entity in this State to act as a real estate broker or real estate salesman, or directly or indirectly to engage or assume to engage in the business of real estate broker or real estate salesman or to advertise or hold himself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Commission (hereinafter referred to as the Commission), under the provisions of this Chapter."

Sec. 20. G.S. 93A-2 reads as rewritten:

"*§ 93A-2. Definitions and exceptions.*

(a) A real estate broker within the meaning of this Chapter is any person, partnership, ~~association, or corporation~~ corporation, limited liability company, association, or other business entity who for a compensation or valuable consideration or promise thereof lists or offers to list, sells or offers to sell, buys or offers to buy, auctions or offers to auction (specifically not including a mere crier of sales), or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or who sells or offers to sell leases of whatever character, or rents or offers to rent any real estate or the improvement thereon, for others.

(b) The term real estate salesman within the meaning of this Chapter shall mean and include any person who under the supervision of a real estate broker, for a compensation or valuable consideration is associated with or engaged by or on behalf of a licensed real estate broker to do, perform or

deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker.

(c) The provisions of this Chapter shall not apply to and shall not include:

(1) Any person, partnership, ~~association or corporation~~ corporation, limited liability company, association, or other business entity who, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment therein;

(2) Any person acting as an attorney-in-fact under a duly executed power of attorney from the owner authorizing the final consummation of performance of any contract for the sale, lease or exchange of real estate;

(3) The acts or services of an attorney-at-law;

(4) Any person, while acting as a receiver, trustee in bankruptcy, guardian, administrator or executor or any person acting under order of any court;

(5) Any person, while acting as a trustee under a trust agreement, deed of trust or will, or his regular salaried employees;

(6) Any salaried person employed by a licensed real estate broker, for and on behalf of the owner of any real estate or the improvements thereon, which the licensed broker has contracted to manage for the owner, if the salaried employee is limited in his employment to: exhibiting units on the real estate to prospective tenants; providing the prospective tenants with information about the lease of the units; accepting applications for lease of the units; completing and executing preprinted form leases; and accepting security deposits and rental payments for the units only when the deposits and rental payments are made payable to the owner or the broker employed by the owner. The salaried employee shall not negotiate the amount of security deposits or rental payments and shall not negotiate leases or any rental agreements on behalf of the owner or broker; or

(7) Any owner who personally leases or sells his own property."

Sec. 21. G.S. 57C-2-01 reads as rewritten:

"*§ 57C-2-01. Purposes.*

(a) Every limited liability company organized under this Chapter has the purpose of engaging in any lawful business unless a more limited lawful purpose is set forth in its articles of organization.

(b) A domestic or foreign limited liability company engaging in a business that is subject to regulation under another statute of this State may be formed or authorized to transact business under this Chapter only if permitted by and subject to all limitations of the other statute giving effect to subsection (c) of this section.

(c) Subsections (a) and (b) of this section to the contrary notwithstanding and except as set forth in this subsection, a domestic or foreign limited liability company shall engage in rendering professional services only to the extent ~~that, and subject to the conditions and limitations under which, a professional corporation may engage in rendering professional services~~

~~under Chapter 55B of the General Statutes (the Professional Corporation Act) and under the applicable licensing statute.~~ that a professional corporation acting pursuant to Chapter 55B of the General Statutes or a corporation acting pursuant to Chapter 55 of the General Statutes may engage in rendering professional services under the conditions and limitations imposed by an applicable licensing statute. Chapter 55B of the General Statutes and each applicable licensing statute are deemed amended to provide that professionals licensed under the applicable licensing statute may render professional services through a domestic or foreign limited liability company. For purposes of applying the provisions, conditions, and limitations of Chapter 55B of the General Statutes and the applicable licensing statute to domestic and foreign limited liability companies that engage in rendering professional services, (i) unless the context clearly requires otherwise, references to Chapter 55 of the General Statutes (the North Carolina Business Corporation Act) shall be treated as references to this Chapter, and references to a 'corporation' or 'foreign corporation' shall be treated as references to a limited liability company or foreign limited liability company, respectively, (ii) members shall be treated in the same manner as shareholders of a professional corporation, (iii) managers shall be treated in the same manner as directors of a professional corporation, (iv) the persons signing the articles of organization of a limited liability company shall be treated in the same manner as the incorporators of a professional corporation, and (v) the name of a domestic or foreign limited liability company so engaged shall comply with G.S. 57C-2-30 or G.S. 57C-7-06 and, in addition, shall contain the word 'Professional' or the abbreviation 'P.L.L.C.' or 'PLLC'. For purposes of this subsection, 'applicable licensing statute' shall mean those provisions of the General Statutes referred to in G.S. 55B-2(6).

Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, or the standards of professional conduct applicable to the rendering of the services. This Chapter does not relieve individuals of responsibilities, obligations, or the imposition of sanctions under applicable licensing statutes, even if the sanctions are imposed for the conduct of other members of a limited liability company. A member or manager of a professional limited liability company is not individually liable for debts and obligations of the professional limited liability company arising from errors, omissions, negligence, incompetence, or malfeasance committed in the course of the professional limited liability company's business by another member or manager or a representative of the professional limited liability company not working under the supervision or direction of the first member or manager at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first member or manager was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other member or manager or representative."

Sec. 22. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

H.B. 496 **CHAPTER 352**

AN ACT TO CREATE AN OFFENSE OF ASSAULTING A SCHOOL BUS DRIVER AND OTHER SCHOOL PERSONNEL BOARDING OR ON A SCHOOL BUS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-33 reads as rewritten:

"*§ 14-33. Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments.*

(a) Any person who commits a simple assault or a simple assault and battery or participates in a simple affray is guilty of a Class 1 misdemeanor.

(b) Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class 1 misdemeanor if, in the course of the assault, assault and battery, or affray, he:

(1) Inflicts, or attempts to inflict, serious injury upon another person or uses a deadly weapon;

(2) Assaults a female, he being a male person at least 18 years of age;

(3) Assaults a child under the age of 12 years;

(4) through (7) Repealed by Session Laws 1991, c. 525, s. 1;

(8) Assaults an officer or employee of the State or of any political subdivision of the State, a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes, or a campus police officer certified pursuant to the provisions of Chapter 17C or Chapter 116 of the General Statutes, when the officer or employee is discharging or attempting to discharge his official duties; or

(9) Commits an assault and battery against a sports official when the sports official is discharging or attempting to discharge official duties at a sports event, or immediately after the sports event at which the sports official discharged official duties. A "sports official" is a person at a sports event who enforces the rules of the event, such as an umpire or referee, or a person who supervises the participants, such as a coach. A "sports event" includes any interscholastic or intramural athletic activity in a primary, middle, junior high, or high school, college, or university, any organized athletic activity sponsored by a community, business, or nonprofit organization, any athletic activity that is a professional or semiprofessional event, and any other organized athletic activity in the State.

(10) Assaults a school bus driver, school bus monitor, or school employee who is boarding the school bus or who is on the school bus."

Sec. 2. This act becomes effective December 1, 1995, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

H.B. 762 **CHAPTER 353**

AN ACT TO REMOVE THE REQUIREMENT THAT DEPOSITIONS RECORDED BY SOUND-AND-VISUAL MEANS MUST BE TRANSCRIBED AND TO PROVIDE THAT, INSTEAD OF A TRANSCRIPTION, THE RECORDING MAY BE REVIEWED BY THE DEPONENT AND MAY BE USED AS THE COURT'S COPY OF THE DEPOSITION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 30(b)(4) reads as rewritten:

"(4) Unless the court orders otherwise, testimony at a deposition may be recorded by sound recording, sound-and-visual, or stenographic means. ~~In addition to stenographic means, testimony at a deposition may also be taken without order of court by other means, including videotape.~~ If the testimony is to be taken by other means in addition to or in lieu of stenographic means, the notice shall state the methods by which it shall be ~~taken and the deposing party shall provide for the transcribing of the testimony taken and the filing of the transcript of such testimony with the clerk in the manner provided in subsection (f)(1) of this rule.~~ taken and shall state whether a stenographer will be present at the deposition. In the case of a deposition taken by stenographic means, the party that provides for the stenographer shall provide for the transcribing of the testimony taken. If the deposition is by sound recording only, the party noticing the deposition shall provide for the transcribing of the testimony taken. If the deposition is by sound-and-visual means, the appearance or demeanor of deponents or attorneys shall not be distorted through camera techniques. Regardless of the method stated in the notice, any party or the deponent may have the testimony recorded by stenographic means."

Sec. 2. G.S. 1A-1, Rule 30(e) reads as rewritten:

"(e) Submission to deponent; changes; signing. -- ~~When the testimony is fully transcribed the deposition shall be submitted to the deponent for examination and shall be read to or by him, unless such examination and reading are waived by the deponent and by the parties. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the person before whom the deposition was taken with a statement of the reasons given by the deponent for making them. The deposition~~ The sound-and-visual recording, or the transcript of it, if any, the transcript of the sound recording, or the transcript of a deposition taken by stenographic means, shall be submitted to the deponent for examination and shall be reviewed by the deponent, unless such examination and review

are waived by the deponent and by the parties. If there are changes in form or substance, the deponent shall sign a statement reciting such changes and the reasons given by the deponent for making them. The person administering the oath shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent. The certificate shall then be signed by the deponent, unless the parties by stipulation waive the signing or the deponent is ill or cannot be found or refuses to sign. If the ~~deposition~~ certificate is not signed by the deponent within 30 days of its submission to him, the person before whom the deposition was taken shall sign the ~~original thereof or, if the deponent refuses to return the original, a copy thereof~~ certificate and state on the ~~record~~ certificate the fact of the waiver or of the illness or absence of the deponent or the fact of the refusal or failure to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though the certificate were signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part."

Sec. 3. G.S. 1A-1, Rule 30(f) reads as rewritten:

"(f) Certification and filing by ~~officer;~~ person administering the oath; exhibits; copies; notice of filing. --

(1) The ~~officer~~ person administering the oath shall certify ~~on the deposition~~ that the deponent was duly sworn by him and that the deposition is a true record of the testimony given by the ~~dependent.~~ deponent. This certificate shall be in writing and accompany the sound-and-visual or sound recording or transcript of the deposition. He shall then place the deposition in an envelope or package endorsed with the title of the action and marked 'Deposition of (here insert name of witness)' and shall personally deliver it or mail it by first class mail to the party taking the deposition or his attorney who shall preserve it as the court's copy.

Documents and things produced for inspection during the examination of the deponent shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (i) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (ii) if the person producing the materials requests their return, the person before whom the deposition is taken shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the ~~officer~~ person administering the oath shall furnish a copy of the deposition to any party or to the deponent.

(3) The clerk shall give prompt notice of the filing of a deposition to all parties."

Sec. 4. This act becomes effective October 1, 1995, and applies to any cases filed on or after that date.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

H.B. 770

CHAPTER 354

AN ACT TO AUTHORIZE THE CREATION OF COUNTY SERVICE DISTRICTS FOR LAW ENFORCEMENT SERVICES AND TO CHANGE THE REQUIREMENTS FOR CREATION OF DISTRICTS COVERING THE ENTIRE UNINCORPORATED AREA OF A COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-301(a) reads as rewritten:

"(a) The board of commissioners of any county may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:

(1) Beach erosion control and flood and hurricane protection ~~works;~~ works.

(2) Fire ~~protection;~~ protection.

(3) ~~Recreation;~~ Recreation.

(4) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or ~~systems;~~ systems.

(5) Solid waste collection and disposal ~~systems;~~ systems.

(6) Water supply and distribution ~~systems;~~ systems.

(7) Ambulance and ~~rescue;~~ rescue.

(8) Watershed improvement projects, including but not limited to watershed improvement projects as defined in General Statutes Chapter 139; drainage projects, including but not limited to the drainage projects provided for by General Statutes Chapter 156; and water resources development projects, including but not limited to the federal water resources development projects provided for by General Statutes Chapter 143, Article ~~21;~~ 21.

(9) Cemeteries.

(10) Law enforcement if all of the following apply:

a. The population of the county is over five hundred thousand according to the most recent federal decennial census.

b. The county has an interlocal agreement with a city in the county under which the city provides law enforcement services in the entire unincorporated area of the county.

c. The county will pay to the city the following percentages of the city-county police department budget if there are no significant changes to the city's statutory annexation authority:

1. 9.60% for fiscal years 1995-96 and 1996-97.
2. 7.60% for fiscal years 1997-98 and 1998-99.
3. 5.60% for fiscal years 1999-2000 and 2000-2001.
4. 3.60% for fiscal years 2001-02 and 2002-03.
5. 1.60% for fiscal years 2003-04 and 2004-05.

Provided, if the difference between the ratio of the population in the unincorporated area to the total population served by the city-county police department and the rate for the current year as stated above is greater than fifteen percent (15%), the the county's agreement to pay such percentages can be amended to reflect that difference."

Sec. 2. G.S. 153A-302 reads as rewritten:

"*§ 153A-302. Definition of service districts.*

(a) Standards. -- In determining whether to establish a proposed service district, the board of commissioners shall ~~consider:~~ consider all of the following:

(1) The resident or seasonal population and population density of the proposed ~~district;~~ district.

(2) The appraised value of property subject to taxation in the proposed ~~district;~~ district.

(3) The present tax rates of the county and any cities or special districts in which the district or any portion thereof is ~~located;~~ located.

(4) The ability of the proposed district to sustain the additional taxes necessary to provide the services planned for the ~~district;~~ district.

(5) If it is proposed to furnish water, sewer, or solid waste collection services in the district, the probable net revenues of the projects to be financed and the extent to which the services will be ~~self-supporting;~~ self-supporting.

(6) Any other matters that the commissioners believe to have a bearing on whether the district should be established.

(a1) Findings. -- The board of commissioners may establish a service district if, upon the information and evidence it receives, the board finds ~~that~~ that all of the following apply:

(1) There is a demonstrable need for providing in the district one or more of the services listed in G.S. ~~153A-301;~~ 153A-301.

(2) It is impossible or impracticable to provide those services on a countywide ~~basis;~~ basis.

(3) It is economically feasible to provide the proposed services in the district without unreasonable or burdensome annual tax ~~levies; and~~ levies.

(4) There is a demonstrable demand for the proposed services by persons residing in the district.

Territory lying within the corporate limits of a city or sanitary district may not be included unless the governing body of the city or sanitary district agrees by resolution to such inclusion.

(b) Report. -- Before the public hearing required by subsection (c), the board of commissioners shall cause to be prepared a report containing:

(1) A map of the proposed district, showing its proposed boundaries;

(2) A statement showing that the proposed district meets the standards set out in subsection (a); and

(3) A plan for providing one or more of the services listed in G.S. 153A-301 to the district.

The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing.

(c) Hearing and Notice. -- The board of commissioners shall hold a public hearing before adopting any resolution defining a new service district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (b) is available for public inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(d) Effective Date. -- The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board of commissioners.

(e) Exceptions For Countywide District. -- The following requirements do not apply to a board of commissioners that proposes to create a law enforcement service district pursuant to G.S. 153A-301(a)(10) that covers the entire unincorporated area of the county:

(1) The requirement that the district cannot be created unless the board makes the finding in subdivision (a1)(2) of this section.

(2) The requirement in subsection (c) of this section to notify each property owner by mail, if the board publishes a notice of its proposal to establish the district, once a week for four successive weeks before the date of the hearing required by that subsection."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

H.B. 846 **CHAPTER 355**

AN ACT TO PROVIDE THAT STATE LEGISLATIVE AND CONGRESSIONAL REDISTRICTING PLANS MAY NOT DIVIDE PRECINCTS UNLESS A PLAN HAS BEEN REJECTED UNDER

SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, AND IF SO REJECTED, ONLY THE MINIMUM NUMBER OF PRECINCTS ARE DIVIDED IN A SUBSEQUENT PLAN AS ARE REQUIRED TO OBTAIN APPROVAL.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"*§ 120-2.1. Dividing precincts in Senate and House apportionment acts restricted.*

(a) An act of the General Assembly that apportions Senate or House districts after the return of a census may not divide precincts unless an act that apportioned Senate or House districts after the return of that same census has been rejected by the United States Department of Justice or the District Court for the District of Columbia under section 5 of the Voting Rights Act of 1965.

(b) If an act that apportioned Senate or House districts has been rejected by the United States Department of Justice or the District Court for the District of Columbia under section 5 of the Voting Rights Act of 1965, then a subsequent act may only divide the minimum number of precincts necessary to obtain approval of the act under section 5 of the Voting Rights Act of 1965.

(c) This section does not prevent the General Assembly from taking any action to comply with federal law or the Constitution of the United States."

Sec. 2. Article 17 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"*§ 163-201.2. Dividing precincts in congressional apportionment acts restricted.*

(a) An act of the General Assembly that apportions congressional districts after the return of a census may not divide precincts unless an act that apportioned congressional districts after the return of that same census has been rejected by the United States Department of Justice or the District Court for the District of Columbia under section 5 of the Voting Rights Act of 1965.

(b) If an act that apportioned congressional districts has been rejected by the United States Department of Justice or the District Court for the District of Columbia under section 5 of the Voting Rights Act of 1965, then a subsequent act may only divide the minimum number of precincts necessary to obtain approval of the act under section 5 of the Voting Rights Act of 1965.

(c) This section does not prevent the General Assembly from taking any action to comply with federal law or the Constitution of the United States."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

H.B. 905 CHAPTER 356

AN ACT TO CLARIFY THE CIVIL REMEDIES AVAILABLE FOR RETURNED CHECKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 6-21.3 reads as rewritten:

"§ *6-21.3. Remedies for returned check.*

(a) Notwithstanding any criminal sanctions that may apply, a person, firm, or corporation who knowingly draws, makes, utters, or issues and delivers to another any check or draft drawn on any bank or depository that refuses to honor the same because the maker or drawer does not have sufficient funds on deposit in or credit with the bank or depository with which to pay the check or draft upon presentation, and who fails to pay the same amount, any service charges imposed on the payee by a bank or depository for processing the dishonored check, and any processing fees imposed by the payee pursuant to G.S. 25-3-512 in cash to the payee within 30 days following written demand therefor, shall be liable to the payee (i) for the amount owing on the check, the service charges, and processing fees and (ii) for additional damages of three times the amount owing on the check, not to exceed five hundred dollars ($500.00) or to be less than one hundred dollars ($100.00). If the amount claimed in the first demand letter is not paid, the claim for the amount of the check, the service charges and processing fees, and the treble damages provided for in this subsection may be made by a subsequent letter of demand prior to filing an action. In an action under this section the court or jury may, however, waive all or part of the additional damages upon a finding that the defendant's failure to satisfy the dishonored check or draft was due to economic hardship.

~~The written demand shall: (i) describe the check or draft and the circumstances of its dishonor, (ii) contain a demand for payment and a notice of intent to file suit for the amount owing on the check, the service charges, and processing fees, and additional damages up to five hundred dollars ($500.00) under this section if payment is not received within 30 days, and (iii) be mailed by certified mail to the defendant at his last known address.~~ The initial written demand for the amount of the check, the service charges, and processing fees shall be mailed by certified mail to the defendant at the defendant's last known address and shall be in the form set out in subsection (a1) of this section. The subsequent demand letter demanding the amount of the check, the service charges, the processing fees, and treble damages shall be mailed by certified mail to the defendant at the defendant's last known address and shall be in the form set out in subsection (a2) of this section. If the payee chooses to send the demand letter set out in subsection (a2) of this section, then the payee may not file an action to collect the amount of the check, the service charges, the processing fees, or treble damages until 30 days following the written demand set out in subsection (a2) of this section.

(a1) The first notification letter shall be substantially in the following form:

'This letter is written pursuant to G.S. 6-21.3 to inform you that on _____, you made and delivered to the business listed above a check payable to this business containing your name and address in the sum of $_____, drawn upon _____ (bank or institution), account # _____.

[*If the check was received in a face-to-face transaction insert this sentence:* This check contained a drivers license identification number from a card with your photograph and mailing address, which was used to identify you at the time the check was accepted.] [*If the check was delivered by mail insert this sentence:* We have compared your name, address, and signature on the check with the name, address, and signature on file in the account previously established by you or on your behalf, and the signature on the check appears to be genuine.] Also, we have received no information that this was a stolen check, if that is the circumstance.

The check has been dishonored by the bank for the following reasons:

_____

As acceptor of the check, we give you notice to rectify any bank error or other error in connection with the transaction, and to pay the face value of the check, plus the fees as authorized under G.S. 25-3-512 and G.S. 6-21.3(a) as follows:

Face value of the check #	$
Processing fee authorized under G.S. 25-3-512	$
Bank service fees authorized under G.S. 6-21.3	$
Total amount due:	$

If the total amount due listed above is not paid within 30 days of the mailing of this letter, thereafter we may file a civil action to seek civil damages of three times the amount of the check (with a minimum damage of one hundred dollars ($100.00) and a maximum damage of five hundred dollars ($500.00)) for allegedly giving a worthless check in violation of law (G.S. 6-21.3), in addition to the amount of the check and the fees specified above.

Appropriate relief will then be sought before a court of proper jurisdiction for full payment of the check plus all costs, treble damages, and witness fees.

If you do not believe you are liable for these amounts, you will have a right to present your defense in court. To pay the check or obtain information, contact the undersigned at the above business location. Cash or a bank official check will be the only acceptable means of redeeming the dishonored check.

If you do not believe that you owe the amount claimed in this letter or if you believe you have received this letter in error, please notify the undersigned at the above business location as soon as possible.'

(a2) If the total amount due in subsection (a1) has not been paid within 30 days after the mailing of the notification letter, a subsequent demand letter may be sent and shall be substantially in the following form:

'On _____, we informed you that we received a check payable to this business containing your name and address in the sum of $_____, drawn upon _____ (bank or institution), account # _____. This check contained identification information which was used to identify you as the maker of the check. Also, we have received no information that this was a stolen check, if that is the circumstance.

The check has been dishonored by the bank for the following reasons:

_____

We notified you that you were responsible for the face value of the check ($_____) plus the fees authorized under G.S. 25-3-512 ($_____) and G.S. 6-21.3(a) ($_____) for a total amount due of $_____. Thirty days have passed since the mailing of that notification letter, and you have not made payment to us for that total amount due.

Under G.S. 6-21.3, we claim you are now liable for the face value of the check, the fees, and treble damages. The damages we claim are three times the amount of the check or one hundred dollars ($100.00), whichever is greater, but cannot exceed five hundred dollars ($500.00). The total amount we claim now due is:

Face value of the check	$_____
Processing fee authorized under G.S. 25-3-512	$_____
Bank service fees authorized under G.S. 6-21.3	$_____
Three times the face value of the check, with a minimum of $100.00 and a maximum of $500.00	$_____
Total amount due:	$_____

Payment of the total amount claimed above within 30 days of the mailing of this letter shall satisfy this civil remedy for the returned check.

If payment has not been received within this 30-day period, we will seek appropriate relief before a court of proper jurisdiction for full payment of the check plus all costs, treble damages, and witness fees.

If you do not believe you are liable for these amounts, you will have a right to present your defense in court. To pay the check or obtain information, contact the undersigned at the above business location. Cash or a bank official check will be the only acceptable means of redeeming the dishonored check.

If you do not believe that you owe the amount claimed in this letter or if you believe you have received this letter in error,

please notify the undersigned at the above business location as soon as possible.'

(b) In an action under subsection (a) of this section, the presiding judge or magistrate may award the prevailing party, as part of the court costs payable, a reasonable attorney's fee to the duly licensed attorney representing the prevailing party in such suit.

(c) It shall be an affirmative defense, in addition to other defenses, to an action under this section if it is found that: (i) full satisfaction of the amount of the check or draft was made prior to the commencement of the action, or (ii) that the bank or depository erred in dishonoring the check or draft, or (iii) that the acceptor of the check knew at the time of acceptance that there were insufficient funds on deposit in the bank or depository with which to cause the check to be honored.

(d) The remedy provided for herein shall apply only if the check was drawn, made, uttered or issued with knowledge there were insufficient funds in the account or that no credit existed with the bank or depository with which to pay the check or draft upon presentation."

Sec. 2. This act becomes effective December 1, 1995, and applies to checks delivered on or after that date.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

H.B. 923 **CHAPTER 357**

AN ACT TO PROVIDE THAT CERTAIN CITIES MAY ALLOW PAWNBROKERS ONLY WITH A SPECIAL USE PERMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-381 reads as rewritten:

"§ *160A-381. Grant of power.*

(a) For the purpose of promoting health, safety, morals, or the general welfare of the community, any city may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11. These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits.

(b) Specifically, the city may require that a pawnshop as defined in Chapter 91A of the General Statutes may only be operated with a special use permit or a conditional use permit, or may have an overlay district wherein

a pawnshop as defined in Chapter 91A of the General Statutes may only be operated with a special use permit or a conditional use permit, and the ordinance may provide that the permit may be issued only upon a finding that the pawnshop would not be deleterious to the neighborhood in which it is to be located. Conditions and safeguards on permits for pawnshops may be imposed notwithstanding G.S. 91A-12. This subsection applies only to cities with a population of 200,000 or over, which have a median family income of forty thousand dollars ($40,000) or over, according to the most recent decennial federal census.

(c) ~~Where~~ Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities. When issuing or denying special use permits or conditional use permits, the city council shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the city council to issue such permits, and every such decision of the city council shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the city council is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the city council may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested."

Sec. 2. This act is effective upon ratification. G.S. 160A-381(b) as enacted by Section 1 of this act expires June 30, 2001.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

H.B. 228 **CHAPTER 358**

AN ACT TO APPROPRIATE FEDERAL BLOCK GRANT FUNDS AND TO EXTEND CERTAIN EXPIRING PROVISIONS.

The General Assembly of North Carolina enacts:

DHR BLOCK GRANT PROVISIONS

Section 1. (a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 1996, according to the following schedule:

COMMUNITY SERVICES BLOCK GRANT

01. Community Action Agencies	$ 9,198,794
02. Limited Purpose Agencies	511,044
03. Department of Human Resources to administer and monitor	

the activities of the Community Services Block Grant	511,044
TOTAL COMMUNITY SERVICES BLOCK GRANT	$ 10,220,882
SOCIAL SERVICES BLOCK GRANT	
01. County Departments of Social Services	$ 36,864,132
02. Allocation for In-Home Services provided by County Departments of Social Services	2,101,113
03. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	5,524,186
04. Division of Services for the Blind	3,205,711
05. Division of Youth Services	1,052,674
06. Division of Facility Services	343,341
07. Division of Aging	336,157
08. Day Care Services	16,194,900
09. Office of Citizen Affairs	55,458
10. State Administration and State Level Contracts	3,473,524
11. Voluntary Sterilization Funds	98,710
12. Transfer to Maternal and Child Health Block Grant	1,585,833
13. Adult Day Care Services	599,551
14. County Departments of Social Services for Child Abuse/Prevention and Permanency Planning	394,841
15. Allocation to Division of Maternal and Child Health for Grants-in-Aid to Prevention Programs	439,261
16. Transfer to Preventive Health Block Grant for Emergency Medical Services and Basic Public Health Services	633,128

17. Allocation to Preventive Health Block Grant for AIDS Education	81,001
18. Allocation to Department of Administration for North Carolina Fund for Children	45,270
19. Allocation to Home and Community Care Block Grant for Persons Age 60 and Older	1,649,077
20. Allocation to the Office of Economic Opportunity for Elderly and Handicapped Services	49,954
21. Division of Services for the Deaf and the Hard of Hearing	31,611
22. Division of Child Development for Head Start	147,467
TOTAL SOCIAL SERVICES BLOCK GRANT	$ 74,906,900

LOW INCOME ENERGY BLOCK GRANT

01. Energy Assistance Programs	$ 13,727,365
02. Crisis Intervention	4,924,615
03. Administration	1,834,677
04. Weatherization Program	3,621,041
05. Indian Affairs	33,022
TOTAL LOW INCOME ENERGY BLOCK GRANT	$ 24,140,270

MENTAL HEALTH SERVICES BLOCK GRANT

01. Provision of Community-Based Services in accordance with the Mental Health Study Commission's Adult Severe and Persistently Mentally Ill Plan	$ 3,794,179
02. Provision of Community-Based Services in accordance with the Mental Health Study Commission's Child Mental Health Plan	1,802,819

03. Administration	572,897
TOTAL MENTAL HEALTH SERVICES BLOCK GRANT	$ 6,169,895
BLOCK GRANT FOR THE PREVENTION AND TREATMENT OF SUBSTANCE ABUSE	
01. Provision of Community-Based Alcohol and Drug Abuse Services, Tuberculosis Services, and Services provided by the Alcohol, Drug Abuse Treatment Centers	$ 10,935,939
02. Continuation and Expansion of Services for Pregnant Women and Women with Dependent Children	5,057,281
03. Continuation and Expansion of Services to IV Drug Abusers and others at risk for HIV diseases	4,560,670
04. Provision of services in accordance with the Mental Health Study Commission's Child and Adolescent Alcohol and other Drug Abuse Plan	5,964,093
05. Administration	1,863,879
TOTAL BLOCK GRANT FOR PREVENTION AND TREATMENT OF SUBSTANCE ABUSE	$ 28,381,862
CHILD CARE AND DEVELOPMENT BLOCK GRANT	
01. Child Day Care Services	$ 16,900,635
02. Administrative Expenses and Quality and Availability Initiatives	1,877,848
03. Before and After School Child Care Programs and Early Childhood Development Programs	4,694,620
04. Quality Improvement Activities	1,564,977
TOTAL CHILD CARE AND DEVELOPMENT BLOCK GRANT	$ 25,037,977

(b) Decreases in Federal Fund Availability

If federal funds are reduced below the amounts specified above after the effective date of this act, then every program, except for the Indian Affairs

Programs in the Low Income Energy Block Grant, in each of the federal block grants listed above, shall be reduced equally to total the reduction in federal funds.

(c) Increases in Federal Fund Availability

Any block grant funds appropriated by the United States Congress in addition to the funds specified in this act shall be expended by the Department of Human Resources, with the approval of the Office of State Budget and Management, provided the resultant increases are in accordance with federal block grant requirements and are within the scope of the block grant plan approved by the General Assembly. All these budgeted increases shall be reported to the Joint Legislative Commission on Governmental Operations and to the Director of the Fiscal Research Division.

This subsection shall not apply to Job Training Partnership Act funds.

(d) If funds appropriated through the Child Care and Development Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to other programs, in accordance with the federal requirements of the grant, in order to use the federal funds fully.

(e) Supplemental Head Start funds appropriated in this section to the Department of Human Resources shall continue to be allocated to those counties currently receiving these funds.

NER BLOCK GRANT FUNDS

Sec. 1.1. (a) Appropriations from federal Community Development Block Grant funds for the 1995 program year are made for the fiscal year ending June 30, 1996, according to the following schedule:

COMMUNITY DEVELOPMENT BLOCK GRANT	
01. State Administration	$ 1,037,740
02. Urgent Needs and Contingency	2,269,350
03. Community Empowerment	3,000,000
04. Economic Development	9,077,400
05. Community Revitalization	29,740,250
06. State Technical Assistance	462,260
07. Micro-Enterprise	1,000,000
08. Infrastructure Survey/Planning	300,000
TOTAL COMMUNITY DEVELOPMENT BLOCK GRANT - 1995 Program Year	$ 46,887,000

(b) Appropriations from federal Community Development Block Grant funds for the 1996 program year are made for the fiscal year ending June 30, 1996, according to the following schedule:

COMMUNITY DEVELOPMENT BLOCK GRANT	
01. State Administration	$ 1,037,740
02. Urgent Needs and Contingency	2,269,350
03. Community Empowerment	3,000,000
04. Economic Development	9,077,400
05. Community Revitalization	29,740,250
06. State Technical Assistance	462,260
07. Micro-Enterprise	1,000,000
08. Infrastructure Survey/Planning	300,000
TOTAL COMMUNITY DEVELOPMENT BLOCK GRANT - 1996 Program Year	$ 46,887,000

(c) Appropriations from federal block grant funds other than the Community Development Block Grant are made for the fiscal year ending June 30, 1996, according to the following schedule:

TOTAL JOB TRAINING PARTNERSHIP ACT	$ 34,444,705
MATERNAL AND CHILD HEALTH SERVICES	
01. Healthy Mother/Healthy Children Block Grants to Local Health Departments	$ 11,303,377
02. High Risk Maternity Clinic Services, Perinatal Education and Training, SIDS, and Consultation/Technical Assistance	1,810,112
03. Services to Children with Special Health Care Needs	5,065,331
04. Nutrition Services	120,530
TOTAL MATERNAL AND CHILD HEALTH SERVICES	$ 18,299,350
PREVENTIVE HEALTH BLOCK GRANT	

01.	Emergency Medical Services	$ 452,375
02.	Basic Public Health Services	180,753
03.	Hypertension Programs	773,203
04.	Statewide Health Promotion Programs	2,689,553
05.	Dental Health for Fluoridation of Water Supplies	228,404
06.	Rape Prevention and Rape Crisis Programs	183,632
07.	AIDS/HIV Education, Counseling, and Testing	81,001
08.	Office of Minority Health and Minority Health Council	190,000
09.	Administrative & Indirect Cost	317,160
TOTAL PREVENTIVE HEALTH BLOCK GRANT		$ 5,096,081

(d) Decreases in Federal Fund Availability

For JTPA and Community Development Block Grants: If federal funds are reduced below the amounts specified above after the effective date of this act, then every program in each of these federal block grants shall be reduced by the same percentage as the reduction in federal funds.

For the Maternal and Child Health Services and Preventive Health Services federal block grants: If federal funds are reduced less than 10% below the amounts specified above after the effective date of this act, then every program in the Maternal and Child Health Services and in the Preventive Health Services block grants shall be reduced by the same percentage as the reduction in federal funds. If federal funds are reduced by 10% or more below the amounts specified above after the effective date of this act, then for the Maternal and Child Health Services and the Preventive Health Services block grants the Department of Environment, Health, and Natural Resources shall allocate the decrease in funds after considering the effectiveness of the current level of services.

(e) Increases in Federal Fund Availability

Any block grant funds appropriated by the Congress of the United States in addition to the funds specified in this act shall be expended as follows:

(1) For the Community Development Block Grant -- each program category under the Community Development Block Grant shall be increased by the same percentage as the increase in federal funds.

(2) For the Maternal and Child Health Services Block Grant -- if federal funds are increased by 10% or more, then the Department

shall allocate the increase in funds after considering the effectiveness of the current level of services and the effectiveness of services to be funded by the increase. If federal funds are increased by less than 10%, then thirty percent (30%) of these additional funds shall be allocated to services for children with special health care needs and seventy percent (70%) shall be allocated to local health departments to assist in the reduction of infant mortality.

(3) For the Preventive Health Block Grants -- if federal funds are increased by 10% or more, then the Department shall allocate the increase in funds after considering the effectiveness of the current level of services and the effectiveness of services to be funded by the increase. If federal funds are increased by less than 10%, then these additional funds may be budgeted by the appropriate department, with the approval of the Office of State Budget and Management, provided the resultant increases are in accordance with federal block grant requirements and are within the scope of the block grant plan approved by the General Assembly.

(f) Changes to budgeted allocations to the Maternal and Child Health Services and the Preventive Health Services block grants due to increases or decreases in federal funds shall be reported to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division within 30 days of the allocation. All other increases shall be reported to the Joint Legislative Commission on Governmental Operations and to the Director of the Fiscal Research Division.

(g) Education Setaside of JTPA Funds

The Department of Commerce shall certify to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office when Job Training Partnership Act funds have been distributed to each agency, the total amount distributed to each agency, and the total amount of eight percent (8%) Education Setaside funds received.

(h) Limitations on Community Development Block Grant Funds

Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated in each category for each program year: up to one million thirty-seven thousand seven hundred forty dollars ($1,037,740) may be used for State administration; up to two million two hundred sixty-nine thousand three hundred fifty dollars ($2,269,350) may be used for Urgent Needs and Contingency; up to three million dollars ($3,000,000) may be used for Community Empowerment; up to nine million seventy-seven thousand four hundred dollars ($9,077,400) may be used for Economic Development; not less than twenty-nine million seven hundred forty thousand two hundred fifty dollars ($29,740,250) shall be used for Community Revitalization; up to four hundred sixty-two thousand two hundred sixty dollars ($462,260) may be used for State Technical Assistance; up to one million dollars ($1,000,000) may be used for Micro-Enterprise; and up to three hundred thousand dollars ($300,000) may be used for Infrastructure Survey/Planning. If federal block grant funds are reduced or increased by the Congress of the United States after the

effective date of this act, then these reductions or increases shall be allocated in accordance with subsection (d) or (e) of this section, as applicable.

SALARIES/GOVERNMENT EMPLOYEES

Sec. 2. (a) The salary schedules and specific salaries established by or under Sections 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.9(a), 7.9(b), 7.10, 7.11, 7.12, 7.13, 19.6, or 19.7 of Chapter 769 of the 1993 Session Laws shall remain until July 14, 1995, at the level set by or under those sections as of June 30, 1995.

(b) No person may receive a salary increase under G.S. 7A-102(c), 126-7 or 20-187.3(a) prior to July 14, 1995. No State employee or officer may prior to July 14, 1995, receive a merit increase or annual increment. No employee or officer subject to the teacher salary schedule or the school-based administrator salary schedule shall receive an increment until July 14, 1995.

CONTINUE MEDIATED SETTLEMENT PILOT

Sec. 3. (a) G.S. 7A-38(o) reads as rewritten:

"(o) Report on pilot program. The Administrative Office of the Courts shall file a written report with the General Assembly on the evaluation of the pilot program on or before May 1, 1995. The pilot program shall terminate on ~~June 30,~~ July 14, 1995."

(b) Notwithstanding the provisions of G.S. 7A-38(n), the Administrative Office of the Courts may use funds available to the Judicial Department from July 1, 1995, to July 14, 1995, for the purpose of operating the pilot program.

EXTEND MULTI-PRIME CONTRACTING PROVISION

Sec. 4. Section 4 of Chapter 480 of the 1989 Session Laws reads as rewritten:

"Sec. 4. This act is effective upon ratification and shall expire on ~~June 30,~~ July 14, 1995."

EXTEND THE SUNSET OF THE STATUTE PERMITTING PRIVATE CONTRACT PARTICIPATION BY THE DEPARTMENT OF TRANSPORTATION

Sec. 5. Section 2 of Chapter 860 of the 1987 Session Laws, as amended by Section 1 of Chapter 749 of the 1989 Session Laws, Section 1 of Chapter 272 of the 1991 Session Laws, and Section 2 of Chapter 183 of the 1993 Session Laws, reads as rewritten:

"Sec. 2. This act is effective upon ratification and shall expire ~~June 30,~~ July 14, 1995."

EXTEND PUBLIC HEALTH STUDY COMMISSION

Sec. 6. Section 8.1 of Chapter 771 of the 1993 Session Laws reads as rewritten:

"Sec. 8.1. This act is effective upon ratification. Part II of this act is repealed on ~~June 30,~~ July 14, 1995."

EXTEND BEAVER DAMAGE CONTROL

Sec. 7. (b) Subsection (h) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws and by Section 27.3 of Chapter 769 of the 1993 Session Laws, reads as rewritten:

"(h) Subsections (a) through (d) of this section expire ~~June 30,~~ July 14, 1995."

EXTEND THE SUNSET FOR THE MEDIATION PROGRAM FOR THE INDUSTRIAL COMMISSION

Sec. 8. (a) Section 5 of Chapter 399 of the 1993 Session Laws reads as rewritten:

"Sec. 5. Section 3 of this act is effective upon ratification. Sections 1, 2, and 4 of this act become effective October 1, 1993, only if the General Assembly appropriates funds to implement the purpose of these sections, expire ~~June 30,~~ July 14, 1995, and apply to claims pending on or filed after the effective date."

(b) Section 5.4 of Chapter 679 of the 1993 Session Laws reads as rewritten:

"Sec. 5.4. Subsection (c) of G.S. 97-80 shall expire ~~June 30,~~ July 14, 1995, in accordance with the provisions of Chapter 399 of the 1993 Session Laws, unless the General Assembly amends Chapter 399 of the 1993 Session Laws to provide otherwise."

EMERGENCY MANAGEMENT FUNDS SHALL NOT REVERT

Sec. 8.1. (a) The balance of any recurring or nonrecurring funds appropriated to the Department of Crime Control and Public Safety, Division of Emergency Management, for the 1993-94 fiscal year and for the 1994-95 fiscal year for the establishment of six Hazardous Materials Emergency Response Teams shall not revert but shall remain in the Department to be used for the purchase of equipment, personnel training needs, and other program operating costs.

(b) This section becomes effective June 30, 1995.

Sec. 9. This act is effective upon ratification, but Sections 2 through 8 expire July 14, 1995.

In the General Assembly read three times and ratified this the 29th day of June, 1995.

S.B. 1021 **CHAPTER 359**

AN ACT TO CLARIFY THAT HOME HEALTH AGENCIES ARE RESTRICTED TO SERVING PATIENTS WITHIN THEIR SERVICE AREA.

The General Assembly of North Carolina enacts:

Section 1. Article 9 of Chapter 131E of the General Statutes is amended by inserting a new section to read:

"*§ 131E-180.1. Home health agency service restriction.*

A home health agency shall not provide part-time, intermittent nursing care, therapy, medical social services, and home health aide services reimbursed by Medicare and Medicaid to patients located outside its service area.

For those home health agencies for which no certificate of need was issued, the home health agency's geographic service area is only those counties in which patients were served as shown on the existing home health agency's licensure renewal form on file with the Licensure Section of the Division of Facility Services as of January 1, 1991.

For those home health agencies for which a certificate of need was issued the home health agency's geographic service area is as follows:

(1) Where the service area is identified on the certificate of need issued to the home health agency, the agency's geographic service area is the service area identified on the certificate of need.

(2) Where the service area is not identified on the certificate of need issued to the home health agency, the agency's geographic service area is the proposed geographic service area that is identified in the application for a certificate of need and approved by the Certificate of Need Section of the Division of Facility Services."

Sec. 2. This act is effective upon ratification. Section 1 expires at such time that the Division of Facility Services completes and implements the current rewrite of home care licensure rules, but shall be no earlier than February 1, 1996, and no later than June 30, 1996.

In the General Assembly read three times and ratified this the 30th day of June, 1995.

H.B. 994 **CHAPTER 360**

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE COMMITTEE ON APPROPRIATIONS BY CHANGING VARIOUS REVENUE STATUTES.

The General Assembly of North Carolina enacts:

REVENUE DEPARTMENT COLLECT SOME PREMIUMS TAX

Section 1. (a) G.S. 105-228.9 reads as rewritten:

"§ *105-228.9. Commissioner of Insurance to administer portions of Article.*

~~This~~ Notwithstanding any other provision of this Article, the taxes levied in this Article on self-insurers and the additional tax levied in this Article at the rate of one and thirty-three hundredths percent (1.33%) on contracts of insurance applicable to fire and lightning coverage shall be administered solely by the Commissioner of Insurance, who has the same authority and responsibility in administering those portions of this Article as the Secretary of Revenue has in administering the other ~~Articles of this Chapter. All provisions of this Chapter that are not inconsistent with this Article apply to this Article.~~ portions of this Article."

(b) G.S. 105-228.3 reads as rewritten:

"§ *105-228.3. ~~To whom this Article shall apply.~~ Definitions.*

The following definitions apply in this Article:

(1) Article 65 corporation. -- A corporation subject to Article 65 of Chapter 58 of the General Statutes, regulating hospital, medical, and dental service corporations.

(2) Insurer. -- An insurer as defined in G.S. 58-1-5 or a group of employers who have pooled their liabilities pursuant to G.S. 97-93 of the Workers' Compensation Act.

(3) Self-insurer. -- An employer that carries its own risk pursuant to G.S. 97-93 of the Workers' Compensation Act.

~~provisions of this Article shall apply to every person, firm, corporation, association, society, or order operating in this State, hereinafter to be referred to as insurance company, which contracts or offers on his, their, or its account to issue any policy or contract for annuities or insurance as defined in G.S. 58-1-10, or to exchange or issue reciprocal or interinsurance contracts, or to function as a rate-making bureau or association, advisory organization, joint underwriting or joint reinsurance organization, or to serve as an underwriters agency. Said provisions shall likewise apply to any person, firm or corporation who or which shall be a broker, organizer, manager, or agent, whether local, special or general, of any insurance company, and to self-insurers under the provisions of the Workers' Compensation Act."~~

(c) G.S. 105-228.4 is recodified as G.S. 58-6-7.

(d) G.S. 105-228.5 reads as rewritten:

"*§ 105-228.5. Taxes measured by gross premiums.*

(a) Tax Levied. -- ~~Every insurance company and every corporation subject to Article 65 of Chapter 58 of the General Statutes is subject to the tax imposed by this section.~~ A tax is levied in this section on insurers, Article 65 corporations, and self-insurers. ~~A person who~~ An insurer or Article 65 corporation that is subject to the tax ~~imposed~~ levied by this section is not subject to franchise or income taxes imposed by Articles 3 and 4, respectively, of this Chapter.

(b) Tax Base. -- The tax imposed by this section on an ~~insurance company~~ insurer shall be measured by gross premiums from business done in this State during the preceding calendar ~~year and the tax on a corporation subject to Article 65 of Chapter 58 of the General Statutes~~ year. The tax imposed by this section on an Article 65 corporation shall be measured by gross collections from membership dues, exclusive of receipts from cost plus plans, received by the corporation during the preceding calendar year. The tax imposed by this section on a self-insurer shall be measured by the gross premiums that would be charged against the same or most similar industry or business, taken from the manual insurance rate then in force in this State, applied to the self-insurer's payroll for the previous calendar year as determined under Article 2 of Chapter 97 of the General Statutes modified by the self-insurer's approved experience modifier.

In determining the amount of gross premiums from business in this State, all gross premiums received in this State, credited to policies written or procured in this State, or derived from business written in this State shall be deemed to be for contracts covering persons, property, or risks resident or located in this State unless one of the following applies:

(1) The premiums are properly reported and properly allocated as being received from business done in some other nation, territory, state, or states.

(2) The premiums are from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.

Gross premiums from business done in this State in the case of life insurance contracts, including supplemental contracts providing for disability benefits, accidental death benefits, or other special benefits that are not annuities, ~~shall mean~~ means all premiums collected in the calendar year, other than for contracts of reinsurance, for policies the premiums on which are paid by or credited to persons, firms, or corporations resident in this State, or in the case of group policies, for contracts of insurance covering persons resident within this State. The only deductions allowed shall be for premiums refunded on policies rescinded for fraud or other breach of contract and premiums that were paid in advance on life insurance contracts and subsequently refunded to the insured, premium payer, beneficiary or estate. Gross premiums shall be deemed to have been collected for the amounts as provided in the policy contracts for the time in force during the year, whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend, or by any other means except waiver of premiums by companies under a contract for waiver of premium in case of disability.

Gross premiums from business done in this State for all other contracts of insurance, including contracts of insurance required to be carried by the Workers' Compensation Act, ~~shall mean~~ means all premiums written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether the premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for the premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any other deduction except for return of premiums, deposits, fees, or assessments for adjustment of policy rates or for cancellation or surrender of policies.

(c) Exclusions. -- Every insurer, in computing the premium tax, shall exclude all of the following from the gross amount of premiums:

(1) All premiums received on or after July 1, 1973, from policies or contracts issued in connection with the funding of a pension, annuity, or profit-sharing plan qualified or exempt under ~~sections~~ section 401, 403, 404, 408, 457 or 501 of the Code as defined in G.S. 105-228.90.

(2) Premiums or considerations received from annuities, as defined in G.S. 58-7-15.

(3) Funds or considerations received in connection with funding agreements, as defined in G.S. 58-7-16.

The gross amount of the excluded premiums, funds, and considerations shall be exempt from the tax imposed by this section.

(d) Tax Rates. -- The tax rate to be applied to gross ~~premiums~~ premiums, or the equivalent thereof in the case of self-insurers, collected on contracts applicable to liabilities under the Workers' Compensation Act shall be two and five-tenths percent (2.5%). The tax rate to be applied to gross premiums collected on all other insurance contracts issued by insurers shall be one and nine-tenths percent (1.9%). An additional tax shall be applied to amounts collected on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies, at the rate of one and thirty-three hundredths percent ~~(1.33%). Twenty-five~~ (1.33%); twenty-five percent (25%) of the net proceeds of ~~the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage~~ this additional tax shall be deposited in the Rural Volunteer Fire Department Fund established in Articles 84 through 88 of Chapter 58 of the General Statutes. The tax rate to be applied to gross premiums and/or gross collections from membership dues, exclusive of receipts from cost plus plans, received by Article 65 corporations ~~subject to Article 65 of Chapter 58 of the General Statutes~~ shall be one-half of one percent (1/2 of 1%).

(e) Report and Payment. -- Each ~~insurance company and corporation subject to Article 65 of Chapter 58 of the General Statutes~~ insurer, Article 65 corporation, and self-insurer doing business in this State shall, within the first 15 days of March, file with the ~~Commissioner of Insurance~~ Secretary of Revenue a full and accurate report of the total gross premiums as defined in this ~~section~~ section, the payroll and other information required by the Secretary in the case of a self-insurer, or the total gross collections from membership dues exclusive of receipts from cost plus plans collected in this State during the preceding calendar year. ~~The Commissioner of Insurance shall specify the form of the report and the information to be contained in the report.~~ The report shall be verified by the oath of the ~~company~~ official or other representative responsible for transmitting ~~it or by some principal officer at the home or head office of the company or association in this country. The~~ it; the taxes imposed by this section shall be remitted to the ~~Commissioner of Insurance~~ Secretary with the report. ~~This subsection applies to reports and taxes for firms, corporations, or associations exchanging reciprocal or interinsurance contracts, and those reports and taxes shall be transmitted by their attorneys-in-fact.~~

(f) Installment Payments Required. -- ~~Insurance companies and corporations subject to Article 65 of Chapter 58 of the General Statutes~~ Insurers, Article 65 corporations, and self-insurers that are subject to the tax imposed by this section and have a premium tax liability of ten thousand dollars ($10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal quarterly installments with each installment equal to at least thirty-three and one-third percent (33 1/3%) of the premium tax liability incurred in the immediately preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall

remit the balance by the following March 15 in the same manner provided in this section for annual returns.

The ~~Commissioner of Insurance~~ Secretary of Revenue may permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

~~If a company does not meet the installment payment requirement of this subsection, the Commissioner of Insurance shall assess a penalty on underpayments that is equal to the interest rate adopted by the Secretary of Revenue~~ An underpayment of an installment payment required by this subsection shall bear interest, as a penalty, at the rate established under G.S. 105-241.1(i). Any overpayment shall bear interest as provided in G.S. 105-266(b) and, together with the interest, shall be credited to the company and applied against the taxes imposed upon the company under this Article.

(g) Exemptions. -- This section does not apply to farmers' mutual assessment fire insurance companies or to fraternal orders or societies that do not operate for a profit and do not issue policies on any person except members."

(e) G.S. 105-228.5A reads as rewritten:

"*§ 105-228.5A. Credit against gross premium tax for assessments paid to the Insurance Guaranty Association and the Life and Health Insurance Guaranty Association.*

(a) The following definitions apply in this section:

(1) Assessment. -- An assessment as described in G.S. 58-48-35 or an assessment as described in G.S. 58-62-41.

(2) Association. -- The North Carolina Insurance Guaranty Association created under G.S. 58-48-25 or the North Carolina Life and Health Insurance Guaranty Association created under G.S. 58-62-26.

~~(3) Commissioner. -- Commissioner of Insurance.~~

(4) Member insurer. -- A member insurer as defined in G.S. 58-48-20 or a member insurer as defined in G.S. 58-62-16.

(b) A member insurer who pays an assessment is allowed as a credit against the tax imposed under G.S. 105-228.5 an amount equal to twenty percent (20%) of the amount of the assessment in each of the five taxable years following the year in which the assessment was paid. In the event a member insurer ceases doing business, all assessments for which it has not taken a credit under this section may be credited against its premium tax liability for the year in which it ceases doing business. The amount of the credit allowed by this section may not exceed the member insurer's premium tax liability for the taxable year.

(c) Any sums that are acquired by refund, under either G.S. 58-48-35 or G.S. 58-62-41, from the Association by member insurers, and that have previously been offset against premium taxes as provided in subsection (b) of this section, shall be paid by the member insurers to this State in the manner required by the ~~Commissioner.~~ Secretary of Revenue. The Association shall notify the ~~Commissioner~~ Secretary that the refunds have been made."

(f) G.S. 105-228.8 reads as rewritten:

"§ *105-228.8. Retaliatory premium taxes.*

(a) When the laws of any other state impose, or would impose, any premium taxes, upon North Carolina ~~insurers~~ companies doing business in the other state that are, on an aggregate basis, in excess of the premium taxes directly imposed upon similar ~~insurers~~ companies by the statutes of this State, the ~~Commissioner of Insurance~~ Secretary of Revenue shall impose the same premium taxes, on an aggregate basis, upon the ~~insurers~~ companies chartered in the other state doing business or seeking to do business in North Carolina. Any ~~insurer~~ company subject to the retaliatory tax imposed by this section shall report and pay ~~such~~ the tax with the annual premium tax return required by G.S. 105-228.5. The retaliatory tax imposed by this section shall be included in the quarterly prepayment rules for premium taxes.

(b) For purposes of this section, the following definitions shall be applied:

(1) 'State' includes the District of Columbia and other states, territories, and possessions of the United States, the provinces of Canada, and other nations.

(2) ~~'Insurers'~~ 'Companies' includes all entities subject to tax under G.S. 105-228.5.

(c) For purposes of this section, any premium taxes that are, or would be, imposed upon North Carolina ~~insurers~~ companies by any city, county, or other political subdivision or agency of another state shall be deemed to be imposed directly by that state.

(d) In computing the premium taxes that another state imposes, or would impose, upon a North Carolina ~~insurer~~ company doing business in the state, it shall be assumed that North Carolina ~~insurers~~ companies pay the highest rates of premium tax that are generally imposed by the other state on similar ~~insurers~~ companies chartered outside of the state.

(e) This section shall not apply to special purpose obligations or assessments based on premiums imposed in connection with particular kinds of insurance, to the special purpose regulatory charge imposed under G.S. 58-6-25, or to dedicated special purpose taxes based on premiums. For purposes of this section, seventy-five percent (75%) of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall not be a special purpose obligation or assessment or a dedicated special purpose tax within the meaning of this subsection.

(f) If the laws of another state retaliate against North Carolina ~~insurers~~ companies on other than an aggregate basis, the ~~Commissioner of Insurance~~ Secretary of Revenue shall retaliate against ~~insurers~~ companies chartered in ~~such~~ that state on the same basis."

(g) G.S. 105-266(b) reads as rewritten:

"(b) Interest. -- An overpayment of tax bears interest at the rate established in G.S. 105-241.1(i) from the date that interest begins to accrue until a refund is paid. A refund is considered paid on a date determined by the Secretary that is no sooner than five days after a refund check is mailed.

Interest on an overpayment of a tax, other than a tax levied under Article 4 or Article 8B of this Chapter, accrues from a date 90 days after the date

the tax was originally paid by the taxpayer until the refund is paid. Interest on an overpayment of a tax levied under Article 4 or Article 8B of this Chapter accrues from a date 45 days after the latest of the following dates until the refund is paid:

(1) The date the final return was filed.

(2) The date the final return was due to be filed.

(3) The date of the overpayment.

The date of an overpayment of a tax levied under Article 4 or Article 8B of this Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the Code."

(h) G.S. 97-100 reads as rewritten:

"*§ 97-100. Rates for insurance; carrier to make reports for determination of solvency; tax upon premium; ~~returned or canceled premiums; reports of premiums collected;~~ wrongful or fraudulent representation of carrier punishable as misdemeanor; ~~notices to carrier; employer who carries own risk shall make report on payroll,~~ notices.*

(a) The rates charged by all carriers of insurance, including the parties to any mutual insurance association writing insurance against the liability for compensation under this Article, shall be fair, reasonable, and adequate.

(b) Each ~~such~~ insurance carrier shall report to the Commissioner of Insurance, in accordance with ~~such reasonable rules as~~ rules adopted by the Commissioner of ~~Insurance may at any time prescribe,~~ Insurance, for the purpose of determining the solvency of the carrier and the adequacy of its rates; for ~~such~~ this purpose the Commissioner of Insurance may inspect the books and records of ~~such~~ any insurance carrier, and examine its agents, officers, and directors under oath.

(c) Every insurer under this Article, every employer carrying its own risk under G.S. 97-93, and every group of employers that has pooled the employers' liabilities under G.S. 97-93 is subject to the premiums tax levied in Article 8B of Chapter 105 of the General Statutes. ~~person, partnership, association, corporation, whether organized under the laws of this or any other state or country, every mutual company or association and every other insurance carrier insuring employers in this State against liability for personal injuries to their employees, or death caused thereby, under the provisions of this Article, shall, as hereinafter provided, pay a tax upon the premium received, whether in cash or notes, in this State, or on account of business done in this State, for such insurance in this State, at the rate provided in the Revenue Act then in force, which tax shall be in lieu of all other taxes on such premiums, which tax shall be assessed and collected as hereinafter provided; provided, however, that such insurance carriers shall be credited with all canceled or returned premiums actually refunded during the year on such insurance.~~

~~(d) Every such insurance carrier shall, for the six months ending December 31, 1929, and annually thereafter, make a return, verified by the affidavit of its president and secretary, or other chief officers or agents, to the Commissioner of Insurance, stating the amount of all such premiums and credits during the period covered by such return. Every insurance carrier required to make such return shall file the same with the Commissioner of Insurance on or before the first day of April after the close~~

~~of the period covered thereby, and shall at the same time pay to the State Insurance Commissioner the tax provided in the Revenue Act then in force on such premium ascertained, as provided in subsection (c) hereof, less returned premium on canceled policies.~~

~~(e) If any such insurance carrier shall fail or refuse to make the return required by this Article, the said Commissioner of Insurance shall assess the tax against such insurance carrier at the rate herein provided for, on such amount of premium as he may deem just, and the proceedings thereon shall be the same as if the return had been made.~~

~~(f) If any such insurance carrier shall withdraw from business in this State before the tax shall fall due, as herein provided, or shall fail or neglect to pay such tax, the Commissioner of Insurance shall at once proceed to collect the same; and he is hereby empowered and authorized to employ such legal process as may be necessary for that purpose, and when so collected he shall pay the same into the State treasury. The suit may be brought by the Commissioner of Insurance, in his official capacity, in any court of this State having jurisdiction. Reasonable attorney's fees may be taxed as costs therein, and process may issue to any county of the State, and may be served as in civil actions, or in case of unincorporated associations, partnerships, interindemnity contracts, upon any agent of the parties thereto upon whom process may be served under the laws of this State.~~

(g) Any person ~~or persons who shall in this State act or assume~~ who acts or assumes to act as agent for any ~~such~~ insurance carrier whose authority to do business in this State has been suspended, while ~~such~~ the suspension remains in force, ~~or shall neglect or refuse~~ who neglects or refuses to comply with any of the provisions of this ~~section obligatory upon such person or party~~ section, or who ~~shall willfully make~~ willfully makes a false or fraudulent statement of the business or condition of any ~~such~~ insurance carrier, ~~or false or fraudulent return as herein provided, shall be deemed~~ is guilty of a Class 2 misdemeanor.

(h) Whenever by this Article, or the terms of any policy contract, any officer is required to give any notice to an insurance carrier, the ~~same~~ notice may be given by delivery, or by mailing by registered letter properly addressed and stamped, to the principal office or general agent of ~~such~~ the insurance carrier within this State, or to its home office, or to the secretary, general agent, or chief officer ~~thereof~~ of the carrier in the United States, or to the ~~State Insurance Commissioner.~~ Commissioner of Insurance.

~~(i) Any insurance carrier liable to pay a tax upon premiums under this Article shall not be liable to pay any other or further tax upon such premiums, under any other law of this State.~~

~~(j) Every employer carrying his own risk under the provisions of G.S. 97-93 shall, under oath, report to the Commissioner of Insurance his payroll, subject to the provisions of this Article. Such report shall be made in form prescribed by the Commissioner of Insurance, and at the times herein provided for premium reports by insurer. The Commissioner of Insurance shall assess against such payroll a maintenance fund tax computed by taking such percent of the basic premiums charged against the same or most similar industry or business taken from the manual insurance rate then in force in this State as is assessed in the Revenue Act against the insurance~~

~~carriers for premiums collected on compensation insurance policies. The Commissioner shall use the approved experience modifier of an employer in calculating the employer's maintenance fund tax liability under this subsection. Receipts collected under this subsection shall be deposited to the credit of the State Treasurer as general fund revenue.~~

~~(k) Every group of two or more employers who have pooled their liabilities pursuant to G.S. 97-93 shall pay a tax upon premiums received in this State in the same manner as the tax is calculated and paid by insurance carriers insuring employers in this State and set forth in subsections (c), (d), (e), and (f) above.~~"

(i) G.S. 58-6-25(c) reads as rewritten:

"(c) Returns; When Payable. The charge levied on each insurance company is payable at the time the insurance company remits its premium tax. If the insurance company is required to remit installment payments of premiums tax under G.S. 105-228.5 for a taxable year, it shall also remit installment payments of the charge levied in this section for that taxable year at the same time and on the same basis as the premium tax installment payments. Each installment payment shall be equal to at least thirty-three and one-third percent (33.3%) of the insurance company's regulatory charge liability incurred in the immediately preceding taxable year.

Every insurance company shall, on or before the date the charge levied in this section is due, file a return on a form prescribed by the ~~Commissioner.~~ Secretary of Revenue. The ~~report~~ return shall state the company's total North Carolina premiums for the taxable year and shall be accompanied by any supporting documentation that the ~~Commissioner~~ Secretary of Revenue may by rule require."

(j) This section becomes effective January 1, 1996.

DISCONTINUE INSURANCE AUDIT AND EXAMINATION FEE CHARGES

Sec. 2. (a) G.S. 58-30-22(c) is repealed.

(b) G.S. 58-40-90 reads as rewritten:

"*§ 58-40-90. Examination of rating, joint underwriting, and joint reinsurance organizations.*

The Commissioner shall, at least once every three years, make or cause to be made an examination of each rating organization licensed pursuant to G.S. 58-40-50 and each advisory organization licensed pursuant to G.S. 58-40-55. ~~He~~ The Commissioner may, as often as ~~he may deem it~~ deemed expedient, make or cause to be made, an examination of each group, association, or other organization referred to in G.S. 58-40-60. ~~Such~~ This examination shall relate only to the activities conducted pursuant to this Article and to the organizations licensed under this Article. ~~The reasonable cost of any such examination shall be paid by the organization examined upon presentation to it of a detailed account of such cost.~~ The officers, manager, agents and employees of any such organization may be examined at any time under oath and shall exhibit all books, records, account, documents or agreements governing its method of operation. In lieu of any such examination, the Commissioner may accept the report of an

examination made by the insurance advisory official of another state, pursuant to the laws of ~~such~~ that state."

(c) G.S. 58-2-131(k) reads as rewritten:

"(k) When making an examination, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as ~~examiners, the cost of which shall be borne by the insurer that is the subject of the examination,~~ examiners."

(d) G.S. 58-2-133(c) reads as rewritten:

"(c) ~~Any insurer examined shall pay the proper charges incurred in the examination, including the expenses and compensation of the Commissioner. The charges and expenses shall be reasonable as determined by the Commissioner and in accordance with guidelines established by the NAIC set forth in the NAIC Examiners' Handbook.~~ The refusal of any insurer to submit to ~~examination, or the refusal or failure of any insurer to pay the expenses of examination upon presentation by the Commissioner of a bill for those expenses,~~ examination is grounds for the revocation, suspension, or refusal of a license. The Commissioner may make public any such revocation, suspension, or refusal of license and may give reasons for that action. ~~The Commissioner shall promptly begin a civil action to recover the expenses of examination against any insurer that refuses or fails to pay.~~"

(e) G.S. 58-2-195(e) reads as rewritten:

"(e) Whenever the Commissioner deems it to be prudent for the protection of policyholders in this State, he or any other authorized employee described in G.S. 58-2-25 shall visit and examine any insurance agency, agent, broker, adjuster, motor vehicle damage appraiser, or producer of ~~record, which shall pay the proper charges incurred in the examination, including the expenses and compensation of the Commissioner or his authorized employee. Such expenses shall not exceed the per diem and allowances specified in G.S. 138-5; provided, the collection of such expense and allowance may, in the discretion of the Commissioner, be waived,~~ record. The refusal of any agency, agent, broker, adjuster, motor vehicle damage appraiser, or producer of record to submit to ~~examination or to pay the expenses of examination upon presentation of a bill therefor by the Commissioner or his authorized employee,~~ examination is grounds for the revocation or refusal of a license. ~~The Commissioner may institute a civil action to recover the expenses of examination against any person that refuses or fails to pay the expenses.~~"

(f) G.S. 58-6-5(3) reads as rewritten:

"(3) The Commissioner shall receive for copy of any record or paper in his office fifty cents (50¢) per copy sheet and ten dollars ($10.00) for certifying same, or any fact or data from the records of his ~~office; for examination of any foreign company, not less than forty dollars ($40.00) per diem and all expenses or the fees as prescribed by the Examination Committee of the National Association of Insurance Commissioners, and for examining any domestic company, actual expenses incurred;~~ office and for the examination and approval of charters of companies, twenty-five dollars ($25.00). ~~Notwithstanding the provisions of G.S. 138-6,~~

~~the Commissioner is authorized to pay examiners an amount in lieu of traveling expenses equal to the rate charged to and collected from the companies, associations or orders. For the investigation of tax returns and the collection of any delinquent taxes disclosed by such investigation, the Commissioner may, in lieu of the above per diem charge, assess against any such delinquent company the expense of the investigation and collection of such delinquent tax, a reasonable percentage of such delinquent tax, not to exceed ten per centum (10%) of such delinquency, and in addition thereto.~~"

(g) G.S. 58-7-21(b)(4)b. reads as rewritten:

"b. In the case of a group of incorporated insurers under common administration which (i) complies with the filing requirements contained in the previous paragraph, (ii) has continuously transacted an insurance business outside the United States for at least three years immediately before making application for accreditation, (iii) submits to this State's authority to examine its books and ~~records and bears the expense of the examination,~~ records, and (iv) has aggregate policyholders' surplus of ten billion dollars ($10,000,000,000); the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group under reinsurance contracts issued in the name of the group. In addition, the group shall maintain a joint trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the Commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant."

(h) G.S. 58-19-35(c) is repealed.

(i) G.S. 58-24-135 reads as rewritten:

"§ *58-24-135. Examination of societies; no adverse publications.*

~~(a)~~ The Commissioner, or any person he or she may appoint, may examine any domestic, foreign or alien society transacting or applying for admission to transact business in this State in the same manner as authorized for examination of domestic, foreign or alien insurers. Requirements of notice and an opportunity to respond before findings are made public as provided in the laws regulating insurers shall also be applicable to the examination of societies.

~~(b) The expense of each examination and of each valuation, including compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued, upon statements furnished by the Commissioner.~~"

(j) G.S. 58-48-60(b) reads as rewritten:

"(b) To aid in the detection and prevention of insurer insolvencies, the board of directors may, upon majority vote, request that the Commissioner order an examination of any member insurer which the board in good faith

believes may be in a financial condition hazardous to the policyholders or the public. Within 30 days of the receipt of such request, the Commissioner shall begin such examination. The examination may be conducted as an NAIC examination or may be conducted by such persons as the Commissioner designates. ~~The cost of such examination shall be paid by the Association and the~~ The examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the Commissioner from complying with subsection (c) below. The Commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the Commissioner but it shall not be open to public inspection prior to the release of the examination report to the public."

(k) G.S. 58-62-56(e) reads as rewritten:

"(e) The Board may, upon majority vote, request that the Commissioner order an examination of any member insurer that the Board in good faith believes may be delinquent. Within 30 days of the receipt of the request, the Commissioner shall begin the examination. The examination may be conducted as an NAIC examination or may be conducted by persons the Commissioner designates. ~~The cost of the examination shall be paid by the Association; and the~~ The examination report shall be treated as are other examination reports. In no event shall the examination report be released to the Board before its release to the public; but this does not preclude the Commissioner from complying with subsection (a) of this section. The Commissioner shall notify the Board when the examination is completed. The request for an examination shall be kept on file by the Commissioner, but shall not be open to public inspection before the release of the examination report to the public."

(l) G.S. 58-65-105 reads as rewritten:

"*§ 58-65-105. Visitations and examinations.*

The Commissioner of Insurance or any deputy or examiner or other person whom he may appoint shall have the power of visitations and examination into the affairs of any such corporation and free access to all the books, papers and documents that relate to the business of the corporation, and may summon and qualify witnesses under oath to examine its officers, agents, or employees or other persons in relation to the affairs, transactions and conditions of the ~~corporation, the actual expense of which shall be paid by the association so examined.~~ corporation."

(m) G.S. 58-67-100(c) is repealed.

(n) This section becomes effective July 1, 1995.

INSURANCE REGULATORY CHARGE ADMINISTRATIVE CHANGE

Sec. 3. (a) G.S. 58-6-25 reads as rewritten:

"*§ 58-6-25. Insurance regulatory charge.*

(a) Charge Levied. -- There is levied on each insurance company an annual charge to defray the cost ~~to the Department~~ of regulating the insurance ~~industry and other industries and the general administrative expenses of the State incident thereto.~~ industry. As used in this section, the term 'insurance company' means a company that pays the gross premiums

tax levied in G.S. 105-228.5 and G.S. 105-228.8, except that the term does not include a hospital, medical, or dental service corporation regulated under Articles 65 and 66 of this Chapter. The term 'insurance company' does not include a company regulated under Article 67 of this Chapter. The charge levied in this section is in addition to all other fees and taxes. The charge shall be at a percentage rate of the company's premium tax liability for the taxable year. In determining an insurance company's premium tax liability for a taxable year, additional taxes imposed by G.S. 105-228.8 shall be disregarded.

(b) Rates. -- The rate of the charge for the 1991 taxable year shall be six and five-tenths percent (6.5%). For subsequent taxable years, the rate shall be the percentage rate established by the General Assembly. When the Department prepares its budget request for each upcoming fiscal year, the Department shall propose a percentage rate of the charge levied in this section. The Governor shall submit that proposed rate to the General Assembly each fiscal year. The General Assembly shall set by law the percentage rate of the charge levied in this section. The percentage rate may not exceed the rate necessary to generate funds sufficient to defray the estimated cost of the operations of the Department for each upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed one-third of the estimated cost of operating the Department for each upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Department or a possible unanticipated increase or decrease in North Carolina premiums or other charge revenue.

(c) Returns; When Payable. -- The charge levied on each insurance company is payable at the time the insurance company remits its premium tax. If the insurance company is required to remit installment payments of premiums tax under G.S. 105-228.5 for a taxable year, it shall also remit installment payments of the charge levied in this section for that taxable year at the same time and on the same basis as the premium tax installment payments. Each installment payment shall be equal to at least thirty-three and one-third percent (33.3%) of the insurance company's regulatory charge liability incurred in the immediately preceding taxable year.

Every insurance company shall, on or before the date the charge levied in this section is due, file a return on a form prescribed by the Commissioner. The report shall state the company's total North Carolina premiums for the taxable year and shall be accompanied by any supporting documentation that the Commissioner may by rule require.

(d) Use of Proceeds. -- The ~~Department of~~ Insurance Regulatory Fund is created in the State ~~treasury.~~ treasury, under the control of the Office of State Budget and Management. The proceeds of the charge levied in this section and all fees collected under Articles 69 through 71 of this Chapter and under Articles 9 and 9C of Chapter 143 of the General Statutes shall be credited to the Fund. The Fund shall be placed in an interest-bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund may be spent only pursuant to appropriation by the General Assembly and in accordance with the line item budget enacted by the General Assembly. The Fund is subject to the

provisions of the Executive Budget Act, except that no unexpended surplus of the Fund shall revert to the General Fund. All money credited to the Fund shall be used ~~only to pay~~ to reimburse the General Fund for money appropriated to State agencies to pay the expenses ~~of the Commissioner and the Department that are~~ incurred in regulating the insurance ~~industry and other industries in this State and the general administrative expenses of the State incident thereto.~~ industry."

(b) This section becomes effective July 1, 1995.

CHILD SUPPORT FOR CHILDREN

Sec. 4. (a) G.S. 105A-13 reads as rewritten:

"*§ 105A-13. Disposition of proceeds collected; collection assistance fees.*

(a) Upon effecting final setoffs, the Department shall periodically write checks to the respective claimant agencies for the net proceeds collected on their behalf.

(b) Each year the Department shall ~~calculate~~ determine its actual cost of collection ~~as a percentage of the immediately preceding year's collections under the Setoff Debt Collection Act and~~ under the Setoff Debt Collection Act for the immediately preceding year and shall calculate the percentage that cost represents of the preceding year's collections, excluding collections of child support arrearages under G.S. 105A-2(1)d. The Department shall retain that percentage from the gross proceeds collected by the Department through setoff for the current ~~fiscal year.~~ year, other than the gross proceeds collected of child support arrearages under G.S. 105A-2(1)d."

(b) This section becomes effective January 1, 1996.

CONFORMING CHANGE

Sec. 4.1. Section 28.2(c) of Chapter 324 of the 1995 Session Laws (House Bill 229) is repealed.

Sec. 5. This act becomes effective as provided therein.

In the General Assembly read three times and ratified this the 30th day of June, 1995.

S.B. 341 **CHAPTER 361**

AN ACT TO BRING THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE CONSOLIDATED JUDICIAL RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, AND THE LEGISLATIVE RETIREMENT SYSTEM INTO COMPLIANCE WITH THE INTERNAL REVENUE CODE AND TO BRING THE SUPPLEMENTAL RETIREMENT INCOME PLANS FOR STATE AND LOCAL LAW ENFORCEMENT OFFICERS INTO COMPLIANCE WITH THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-18.7(a) reads as rewritten:

"(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars ($200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars ($150,000), as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensation which would have been recognized under the provisions of this Article in effect on July 1, 1993."

Sec. 2. G.S. 135-74(a) reads as rewritten:

"(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars ($200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars ($150,000), as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensation which would have been recognized under the provisions of this Article in effect on July 1, 1993."

Sec. 3. G.S. 128-38.2(a) reads as rewritten:

"(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars ($200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars ($150,000), as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensation which would have been recognized under the provisions of this Article in effect on July 1, 1993."

Sec. 4. G.S. 120-4.31(a) reads as rewritten:

"(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars ($200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars ($150,000), as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensation which would have been recognized under the provisions of this Article in effect on July 1, 1993."

Sec. 5. G.S. 143-166.30 is amended by adding a new subsection to read:

"(e1) Rights of Participants under the Uniformed Services Employment and Reemployment Rights Act. -- A participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, hereafter referred to as 'USERRA', shall be entitled to all rights and benefits that the participant would have been entitled to under this section had the participant's employment not been interrupted, provided that the participant returns to service as a law enforcement officer while the participant's reemployment rights are protected under the provisions of USERRA."

Sec. 6. G.S. 143-166.50 is amended by adding a new subsection to read:

"(e1) Rights of Participants under the Uniformed Services Employment and Reemployment Rights Act. -- A participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and

Reemployment Rights Act, Public Law 103-353, hereafter referred to as 'USERRA', shall be entitled to all rights and benefits that the participant would have been entitled to under this section had the participant's employment not been interrupted, provided that the participant returns to service as a law enforcement officer while the participant's reemployment rights are protected under the provisions of USERRA."

Sec. 7. This act becomes effective January 1, 1996.

In the General Assembly read three times and ratified this the 30th day of June, 1995.

S.B. 325

CHAPTER 362

AN ACT TO ALLOW THE DISTRICT ATTORNEY'S DESIGNEE OR A SPECIAL PROSECUTOR TO REQUEST THAT AN INVESTIGATIVE GRAND JURY BE CONVENED TO CONSIDER CERTAIN ALLEGED VIOLATIONS OF THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-622(h) reads as rewritten:

"(h) A written petition for convening of grand jury under this section may be filed by the district attorney, the district attorney's designated assistant, or a special prosecutor requested pursuant to G.S. 114-11.6, with the approval of a committee of at least three members of the North Carolina Conference of District Attorneys, and with the concurrence of the Attorney General, with the Clerk of the North Carolina Supreme Court. The Chief Justice shall appoint a panel of three judges to determine whether to order the grand jury convened. A grand jury under this section may be convened if the three-judge panel determines that:

(1) The petition alleges the commission of or a conspiracy to commit a violation of G.S. 90-95(h) or G.S. 90-95.1, any part of which violation or conspiracy occurred in the county where the grand jury sits, and that persons named in the petition have knowledge related to the identity of the perpetrators of those crimes but will not divulge that knowledge voluntarily or that such persons request that they be allowed to testify before the grand jury; and

(2) The affidavit sets forth facts that establish probable cause to believe that the crimes specified in the petition have been committed and reasonable grounds to suspect that the persons named in the petition have knowledge related to the identity of the perpetrators of those crimes.

The affidavit shall be based upon personal knowledge or, if the source of the information and basis for the belief are stated, upon information and belief. The panel's order convening the grand jury as an investigative grand jury shall direct the grand jury to investigate the crimes and persons named in the petition, and shall be filed with the Clerk of the North Carolina Supreme Court. A grand jury so convened retains all powers, duties, and responsibilities of a grand jury under this Article. The contents of the petition and the affidavit shall not be disclosed. Upon receiving a petition

under this subsection, the Chief Justice shall appoint a panel to determine whether the grand jury should be convened as an investigative grand jury.

A grand jury authorized by this subsection may be convened from an existing grand jury or grand juries authorized by subsection (b) of this section or may be convened as an additional grand jury to an existing grand jury or grand juries. Notwithstanding subsection (b) of this section, grand jurors impaneled pursuant to this subsection shall serve for a period of 12 months, and, if an additional grand jury is convened, 18 persons shall be selected to constitute that grand jury. At any time for cause shown, the presiding superior court judge may excuse a juror temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused."

Sec. 2. This act becomes effective December 1, 1995.

In the General Assembly read three times and ratified this the 30th day of June, 1995.

H.B. 239 **CHAPTER 363**

AN ACT TO EXTEND THE AUTHORITY OF CURRITUCK AND UNION COUNTIES TO ACQUIRE SCHOOL PROPERTY SO THAT IT APPLIES BEGINNING JANUARY 1, 1995.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 251 of the 1995 Session Laws is effective on and after January 1, 1995.

Sec. 2. This act applies only to Currituck and Union Counties.

Sec. 3. This act is effective on and after January 1, 1995.

In the General Assembly read three times and ratified this the 30th day of June, 1995.

S.B. 563 **CHAPTER 364**

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY INTO THE CORPORATE LIMITS OF THE TOWN OF CORNELIUS AND TO CLARIFY THE ZONING JURISDICTION OF THE TOWN OF HUNTERSVILLE.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Cornelius are increased by including the following described territory:

East of I-77 Area: Beginning at a point in the eastern margin of U.S. 21, said point being N 17-35-00 W 1396.95' from a point at the intersection of the northern margin of Bailey Road (S. R. 2415) and the eastern margin of U.S. 21 and on the existing Corporate Limits of the Town of Cornelius and running with said corporate limits and the eastern margin of U.S. 21 N 17-35-00 W 237.15' to a point; thence leaving the margin of U.S. 21 N 75-04-30 E 275.81'; thence N 08-20-00 E 218.00' to a point on the southern margin of Westmoreland Road (S. R. 2147); thence S 83-04-30 E 119.30' with said margin to a point on said southern margin; thence crossing

Westmoreland Road (S. R. 2147) N 07-25-00 E 430.00'; thence S 82-35-00 E 125.00'; thence S 07-26-00 W 164.78'; thence S 82-35-00 E 445.70'; thence N 38-54-00 E 707.50'; thence S 51-06-00 E 40.00'; thence N 38-54-00 E 1234.26'; thence N 44-37-00 W 88.64'; thence N 45-23-00 E 200.00'; thence S 44-48-25 E 49.96'; thence N 45-24-25 E 47.66'; thence N 36-37-55 W 330.47' crossing John Hawks Road (S. R. 2414); thence with the northern margin of said road S 53-01-00 W 966.31'; thence leaving the northern margin of said road N 00-56-00 E 423.15'; thence S 89-05-00 W 366.74'; thence N 82-33-30 W 644.00'; thence N 53-33-30 W 548.00'; thence N 07-49-30 W 151.00'; thence N 83-49-00 W 664.95'; thence S 44-18-10 E 581.63'; thence S 46-14-30 E 311.32'; thence S 47-30-00 E 487.50' to a point on the northern margin of an unnamed road; thence with said margin S 67-48-00 W 175.00'; thence S 84-28-00 W 406.92'; thence crossing said road S 16-21-40 E 1190.88'; thence N 87-27-30 E 68.92'; thence S 26-00-20 E 161.00'; thence S 88-52-40 E 90.00'; thence S 17-21-20 W 184.80' to a point on the northern margin of Westmoreland Road (S. R. 2147); thence with the northern margin of said road and crossing U.S. 21 S 88-46-10 W 401.10'; thence with the northern margin of Westmoreland Road (S. R. 2147) S 87-15-05 W 300.00'; thence with the northern margin of said road S 85-01-00 W 254.96'; thence leaving said margin N 09-45-00 W 75.62'; thence N 14-15-00 E 491.79'; thence S 73-27-40 W 300.00'; thence N 14-27-00 E 588.14'; thence N 18-54-40 W 163.00'; thence N 71-05-20 E 306.92' crossing U.S. 21 to a point in the eastern margin of U.S. 21; thence with said eastern margin N 16-39-05 W 896.44' to a point in said margin; thence leaving the Corporate Limits of the Town of Cornelius and recrossing U.S. 21 S 83-48-30 W 292.17' to a point in the eastern margin of Interstate 77; thence continuing with said eastern margin of Interstate 77 S 06-02-20 W 913.87'; thence S 06-23-45 W 277.31'; thence S 06-42-40 W 247.84'; thence S 03-19-10 W 97.54'; thence S 02-00-25 W 477.59'; thence S 21-06-45 E 187.15' to a point in the northern margin of Westmoreland Road (S. R. 2147) at its intersection with the eastern margin of Interstate 77; thence crossing said road S 12-32-30 E 100.17' to a point in the southern margin of Westmoreland Road (S. R. 2147) at its intersection with the eastern margin of Interstate 77; thence leaving the southern margin of Westmoreland Road (S. R. 2147) and continuing with the eastern margin of Interstate 77 S 16-20-10 W 56.89'; thence S 15-56-25 W 165.89'; thence S 06-25-45 E 255.46'; thence leaving the eastern margin of Interstate 77 S 89-59-45 E 63.57'; thence S 76-48-50 E 456.16'; thence N 63-48-10 E 207.10'; thence N 78-05-00 E 549.67' and crossing U.S. 21 to a point in the eastern margin of U.S. 21 and on the existing Corporate Limits of the Town of Cornelius, the point of beginning containing 119.99 acres (5,226,579 square'), more or less. This description was compiled from old records (deeds, record plats, and existing Corporate Limits of the Town of Cornelius) by Wilkins and Associates, Land Surveying Consultants.

Sec. 2. If the description in Section 1 of this act leaves any area entirely surrounded by the corporate limits of the Town of Cornelius, it is also included within the corporate limits of the Town.

Sec. 3. Upon the effective date of this act, initial municipal services shall be provided by the Town to the territory in accord with the services plan approved by the Town on April 3, 1995.

Sec. 3.1. Section 1 of Chapter 884 of the Session Laws of 1991 reads as rewritten:

"Section 1. Notwithstanding Section 12 of Chapter 860 of the 1971 Session Laws, as amended by Chapter 966 of the 1983 Session Laws (Regular Session 1984), the Towns of ~~Cornelius and Davidson~~ Cornelius, Davidson, and Huntersville may exercise the powers granted by Article 19 of Chapter 160A of the General Statutes within extraterritorial areas in Mecklenburg County not to exceed one mile of their respective corporate limits, subject to the limitations set forth in this act."

Sec. 3.2. Chapter 966 of the Session Laws of 1983 is repealed.

Sec. 4. Sections 1 through 3 of this act become effective June 30, 1995. Taxes for the initial year shall be assessed and paid in accordance with G.S. 160A-58.10. Sections 3.1 and 3.2 of this act become effective July 1, 1995.

In the General Assembly read three times and ratified this the 30th day of June, 1995.

S.B. 704 **CHAPTER 365**

AN ACT TO REDEFINE THE BOUNDARIES OF THE WEST END FIRE PROTECTION DISTRICT IN MOORE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 69-25.11, the boundaries of the West End Fire Protection District are as follows:

Beginning at a point at the dead end of SR 1121 (CHICKEN PLANT RD) at North Carolina Grid Coordinates: NORTHING = 1841084 and EASTING = 528340 thence

S76-48-36W 3183.61
S01-08-43W 3633.16
S60-51-54E 1691.09
S01-48-41W 763.19
N73-53-58W 2444.90
S00-33-36E 9858.60
S00-37-10E 46.25
N77-04-04W 3354.33
S19-37-21W 4614.78
N78-01-27W 3267.62
S11-07-32E 1505.48
S61-09-41W 4367.81
N45-45-54W 1284.40
S51-20-25W 1472.72
S51-18-28W 77.83
N63-41-08W 4943.80
N26-51-54W 6216.41
N07 35 39W 2565.19

N56-18-41W 2008.26
N55-32-49W 12862.90
N11-01-31W 6204.90
N15-00-11E 38.63
S07-51-54E 63.03
N49-27-28E 9599.60
S45-00-57E 320.58
N40-59-10E 1144.65
N87-23-47W 1247.91
N42-02-37E 3299.82
S17-29-25E 2450.54
N35-46-06E 2060.06
N22-04-05W 3958.85
N65-24-54E 2383.31
N52-37-18E 30.99
N68-19-16E 2057.53
N60-46-52E 3489.07
N76-42-02E 2916.85
S83-17-26E 4084.22
N37-54-19W 2909.75
N67-11-03E 2756.96
S41-26-36E 2197.72
N68-39-01E 13622.73
S13-04-39E 5773.03
S67-55-56E 3761.44
S01-47-21E 14297.53
N56-54-43W 4458.82
S25-29-40W 5794.89
S33-04-59E 1907.57.

Sec. 2. From and after the effective date of this act, the Board of Commissioners of Moore County and the taxpayers and residents of the West End Fire Protection District shall have the same rights and privileges as though the territory contained within the boundaries set out in Section 1 of this act had originally been included in the fire protection district under Article 3A of Chapter 69 of the General Statutes.

Sec. 3. Any area contained within the description of the West End Fire Protection District set out in Section 1 of this act which had been within the boundaries of the Seven Lakes Service District is removed from that service district by operation of G.S. 153A-304.2.

Sec. 4. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 30th day of June, 1995.

H.B. 645 **CHAPTER 366**

AN ACT TO MAKE STATEWIDE A LOCAL ACT PROVIDING THAT LOCAL GOVERNMENTS MAY REGULATE THE POSSESSION OF OPEN CONTAINERS OF MALT BEVERAGES AND UNFORTIFIED WINE ON PUBLIC PROPERTY AND THE POSSESSION OF MALT

BEVERAGES AND UNFORTIFIED WINE ON PUBLIC STREETS, ALLEYS, OR PARKING LOTS WHICH ARE TEMPORARILY CLOSED TO REGULAR TRAFFIC FOR SPECIAL EVENTS, AND FURTHER DEFINING PUBLIC PROPERTY AND OPEN CONTAINER.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 144 of the Session Laws of 1995 is repealed.

Sec. 2. G.S. 18B-300(c), as rewritten by Section 1 of Chapter 144 of the 1995 Session Laws, and made statewide in its applicability by Section 1 of this act, reads as rewritten:

"(c) Local Ordinance. -- A city or county may by ordinance:

(1) Regulate or prohibit the consumption of malt beverages and unfortified wine on the public streets in that city or county by persons who are not occupants of motor vehicles and on property ~~owned or occupied~~ owned, occupied, or controlled by that city or county;

(2) Regulate or prohibit the possession of open containers of malt beverages and unfortified wine ~~by pedestrians~~ on public streets in that city or county by persons who are not occupants of motor vehicles and on property ~~owned or occupied~~ owned, occupied, or controlled by that city or county; and

(3) Regulate or prohibit the possession of malt beverages and unfortified wine on public streets, alleys, or parking lots which are temporarily closed to regular traffic for special events.

For the purposes of this subsection, an open container means a container whose seal has been broken or a container other than the manufacturer's unopened original container. As provided by G.S. 18B-102(a), possession or consumption of alcoholic beverages is unlawful except as authorized by the ABC law."

Sec. 3. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 30th day of June, 1995.

S.B. 437 **CHAPTER 367**

AN ACT TO REPEAL THE SUNSET CONCERNING GOVERNMENT CONSTRUCTION CONTRACTS AND TO MAKE RELATED CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 480 of the 1989 Session Laws reads as rewritten:

"Sec. 4. This act is effective upon ~~ratification and shall expire on June 30, 1995.~~ ratification."

Sec. 2. Section 3 of Chapter 480 of the 1989 Session Laws is repealed.

Sec. 3. G.S. 44A-26 reads as rewritten:

"§ *44A-26. Bonds required.*

(a) When the total amount of construction contracts awarded for any one project exceeds ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) a performance and payment bond as set forth in (1) and (2) is required by the contracting body from any contractor with a contract more than fifteen thousand dollars ($15,000). In the discretion of the contracting body, a performance and payment bond may be required on any construction contract as follows:

(1) A performance bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such bond shall be solely for the protection of the contracting body which awarded the contract.

(2) A payment bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which a contractor or subcontractor is liable.

(b) The performance bond and the payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the awarding of the construction contract."

Sec. 4. G.S. 143-128 reads as rewritten:

"§ *143-128. ~~Separate specifications for building contracts; responsible contractors.~~ Requirements for certain building contracts.*

(a) Preparation of specifications. -- Every officer, board, department, commission or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration or repair of any buildings for the State, or for any ~~county or municipality,~~ county, municipality, or other public body, ~~when the entire cost of such work shall exceed one hundred thousand dollars ($100,000)~~ must have prepared separate specifications for each of the following subdivisions or branches of work to be performed:

(1) Heating, ventilating, air conditioning and accessories (separately or combined into one conductive system) and/or refrigeration for cold storage (where the cold storage cooling load is 15 tons or more of refrigeration), and all work kindred thereto.

(2) Plumbing and gas fittings and accessories, and all work kindred thereto.

(3) Electrical wiring and installations, and all work kindred thereto.

(4) General work relating to the erection, construction, alteration, or repair of any building above referred to, which work is not included in the above-listed three subdivisions or branches.

All such specifications must be so drawn as to permit separate and independent bidding upon each of the subdivisions or branches of work enumerated above. The above enumeration of subdivisions or branches of work shall not be construed to prevent any officer, board, department,

commission or commissions from preparing additional separate specifications ~~and awarding additional separate contracts~~ for any other category of ~~work when it is deemed in the best interest of such officer, board, department, commission or commissions to do so.~~ work.

(b) Building projects over five hundred thousand dollars ($500,000); separate prime contracts. -- ~~All contracts hereafter awarded by the State or by a county or municipality, or a department, board, commissioner, or officer thereof, for the erection, construction, alteration or repair of buildings, or any parts thereof,~~ Except as provided in subsection (d) of this section, when the entire cost of the erection, construction, alteration, or repair of a building exceeds five hundred thousand dollars ($500,000), the State, county, municipality, or other public body shall accept bids for each subdivision or branch of work for which specifications are required to be prepared under subsection (a) of this section and shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision or branch for which separate bids are required by this subsection is less than ~~ten thousand dollars ($10,000),~~ twenty-five thousand dollars ($25,000), the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost.

Bids may also be accepted from and awards made to separate contractors for other categories of work.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county or municipality, and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, ~~the wording~~ 'separate contractor' ~~is hereby deemed and held to mean~~ means any person, firm or corporation who shall enter into a contract with the State, or with any ~~county or municipality,~~ county, municipality, or other public body, for the erection, construction, alteration or repair of any building or buildings, or parts thereof.

~~All public authorities coming within the requirements of this section shall have the authority to purchase and erect prefabricated or relocatable buildings or portions thereof without complying with the provisions hereof, except that portion of the work which must be performed at the construction site.~~

(c) Building projects five hundred thousand dollars ($500,000) or less. -- When the entire cost of the erection, construction, alteration, or repair of a building is five hundred thousand dollars ($500,000) or less, the State, county, municipality, or other public body may accept bids under the single-prime contract system, the separate prime contract system, or both. The provisions of subsection (b) of this section apply to the use of the separate prime contract system under this subsection. The provisions of subsection (d) of this section apply to the use of the single-prime contract system under this section, except that bidding in the alternative between the single-prime and separate prime systems is not required. Contracts bid in the alternative

between the single-prime and separate prime systems under this subsection must be awarded to the lowest responsible bidder or bidders, as provided in subsection (d) of this section.

~~(b)~~ (d) Single-prime contracts. -- ~~Notwithstanding the provisions of subsection (a) of this section, the~~ The State, a county, municipality, ~~department, board, commission, public hospital,~~ or other public ~~body, or an officer thereof~~ body may ~~use~~ accept bids under the single-prime contract ~~system and may prequalify bidders for all construction contracts.~~ system.

If the State, county, municipality, or other public body ~~chooses to use~~ accepts bids under the single-prime contract system, it must also seek bids for the project under ~~subsection (a) of this section~~ the separate prime contract system and award the contract to the lowest responsible bidder or bidders for the total ~~project.~~ project, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.

~~For~~ When bids are accepted under the single-prime contract system all bidders must identify on their bid the contractors they have selected for the subdivisions or branches of work for:

(1) Heating, ventilating, and air conditioning;
(2) Plumbing;
(3) Electrical; and
(4) General.

No contractor whose bid is accepted shall substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except with the approval of the awarding authority for good cause shown by the contractor. The terms, conditions, and requirements of each contract between the contractor and a subcontractor performing work under a subdivision or branch of work listed in this subsection shall be substantially the same as the terms, conditions, and requirements of the contract between the contractor and the State, county, municipality, or other public body.

(e) Project expediter; scheduling. -- The State, county, municipality, or other public body may, if specified in the bid documents, provide for assignment of responsibility for expediting the work on the project to a single responsible and reliable person, firm, or corporation which may be a prime contractor. In executing this responsibility, the designated project expediter may recommend to the State, county, municipality, or other public body whether payment to a contractor should be approved. The project expediter, if required by the contract documents, shall be responsible for the preparation of the project schedule and shall allow all contractors and subcontractors performing any of the branches of work listed in subsection (d) of this section equal input into the preparation of the initial schedule.

~~(c)~~ (f) Minority goals. -- The State shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of work for each ~~project for which a contract or contracts are awarded pursuant to this section.~~ building project. Each city, county, or other public body shall adopt, after a notice and public hearing, an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for ~~which a contract or contracts are awarded pursuant to this section.~~ each building project.

As used in this subsection:

(1) The term 'minority-business' means a business:
   a. In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons; and
   b. Of which the management and daily business operations are controlled by one or more of the minority persons who own it.

(2) The term 'minority person' means a person who is a citizen or lawful permanent resident of the United States and who is:
   a. Black, that is, a person having origins in any of the black racial groups in Africa;
   b. Hispanic, that is, a person of Spanish or Portugese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
   c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
   d. American Indian or Alaskan Native, that is, a person having origins in any of the original peoples of North America; or
   e. Female.

(3) The term 'verifiable goal' means for purposes of the separate prime contract system, that the awarding authority has adopted written guidelines specifying the actions that will be taken to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section; and

(4) The term 'verifiable goal' means for purposes of the single-prime contract system, that the awarding authority has adopted written guidelines specifying the actions that the prime contractor must take to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section; the required actions must be documented in writing by the contractor to the appropriate awarding authority.

~~(d) The State and its political subdivisions~~ The State, counties, municipalities, and all other public bodies shall award public building contracts ~~pursuant to this section~~ without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible bid or bids.

(g) Exceptions. -- This section shall not apply to:

(1) The purchase and erection of prefabricated or relocatable buildings or portions thereof, except that portion of the work which must be performed at the construction site.

(2) The erection, construction, alteration, or repair of a building when the cost thereof is one hundred thousand dollars ($100,000) or less."

Sec. 5. G.S. 143-128, as amended by Section 4 of this act, reads as rewritten:

"§ *143-128. Requirements for certain building contracts.*

(a) Preparation of specifications. -- Every officer, board, department, commission or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration or repair of any buildings for the State, or for any county, municipality, or other public body, must have prepared separate specifications for each of the following subdivisions or branches of work to be performed:

(1) Heating, ventilating, air conditioning and accessories (separately or combined into one conductive system) and/or refrigeration for cold storage (where the cold storage cooling load is 15 tons or more of refrigeration), and all work kindred thereto.
(2) Plumbing and gas fittings and accessories, and all work kindred thereto.
(3) Electrical wiring and installations, and all work kindred thereto.
(4) General work relating to the erection, construction, alteration, or repair of any building above referred to, which work is not included in the above-listed three subdivisions or branches.

All such specifications must be so drawn as to permit separate and independent bidding upon each of the subdivisions or branches of work enumerated above. The above enumeration of subdivisions or branches of work shall not be construed to prevent any officer, board, department, commission or commissions from preparing additional separate specifications for any other category of work.

(b) Building projects over five hundred thousand dollars ($500,000); separate prime contracts. -- Except as provided in subsection (d) of this section, when the entire cost of the erection, construction, alteration, or repair of a building exceeds five hundred thousand dollars ($500,000), the State, county, municipality, or other public body shall accept bids for each subdivision or branch of work for which specifications are required to be prepared under subsection (a) of this section and shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision or branch for which separate bids are required by this subsection is less than twenty-five thousand dollars ($25,000), the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost.

Bids may also be accepted from and awards made to separate contractors for other categories of work.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county or municipality, and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with

the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, 'separate contractor' means any person, firm or corporation who shall enter into a contract with the State, or with any county, municipality, or other public body, for the erection, construction, alteration or repair of any building or buildings, or parts thereof.

(c) Building projects five hundred thousand dollars ($500,000) or less. -- When the entire cost of the erection, construction, alteration, or repair of a building is five hundred thousand dollars ($500,000) or less, the State, county, municipality, or other public body may accept bids under the single-prime contract system, the separate prime contract system, or both. The provisions of subsection (b) of this section apply to the use of the separate prime contract system under this subsection. The provisions of subsection (d) of this section apply to the use of the single-prime contract system under this section, except that bidding in the alternative between the single-prime and separate prime systems is not required. Contracts bid in the alternative between the single-prime and separate prime systems under this subsection must be awarded to the lowest responsible bidder or bidders, as provided in subsection (d) of this section.

(d) Single-prime and alternative contracts. -- The State, a county, municipality, or other public body may accept bids under the single-prime contract ~~system.~~ system or a contracting method approved by the State Building Commission under G.S. 143-135.26.

If the State, county, municipality, or other public body accepts bids under the single-prime contract system, it must also seek bids for the project under the separate prime contract ~~system~~ system, except as otherwise authorized under G.S. 143-135.26, and award the contract to the lowest responsible bidder or bidders for the total project, taking into consideration quality, performance and the time specified in the bids for the performance of the contract.

When bids are accepted under the single-prime contract system all bidders must identify on their bid the contractors they have selected for the subdivisions or branches of work for:

(1) Heating, ventilating, and air conditioning;
(2) Plumbing;
(3) Electrical; and
(4) General.

No contractor whose bid is accepted shall substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except with the approval of the awarding authority for good cause shown by the contractor. The terms, conditions, and requirements of each contract between the contractor and a subcontractor performing work under a subdivision or branch of work listed in this subsection shall be substantially the same as the terms, conditions, and requirements of the contract between the contractor and the State, county, municipality, or other public body.

The requirements of this subsection governing the identification of bidders, substitution of contractors, and the terms and conditions of subcontractor's contracts apply to all single-prime bidding and single-prime contracts, regardless of whether bidding in the alternative between the

single-prime and separate prime systems has been waived by the State Building Commission.

(e) Project expediter; scheduling. -- The State, county, municipality, or other public body may, if specified in the bid documents, provide for assignment of responsibility for expediting the work on the project to a single responsible and reliable person, firm or corporation, which may be a prime contractor. In executing this responsibility, the designated project expediter may recommend to the State, county, municipality, or other public body whether payment to a contractor should be approved. The project expediter, if required by the contract documents, shall be responsible for the preparation of the project schedule and shall allow all contractors and subcontractors performing any of the branches of work listed in subsection (d) of this section equal input into the preparation of the initial schedule.

(f) Minority goals. -- The State shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of work for each building project. Each city, county, or other public body shall adopt, after a notice and public hearing, an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for each building project.

As used in this subsection:

(1) The term 'minority-business' means a business:
   a. In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons; and
   b. Of which the management and daily business operations are controlled by one or more of the minority persons who own it.

(2) The term 'minority person' means a person who is a citizen or lawful permanent resident of the United States and who is:
   a. Black, that is, a person having origins in any of the black racial groups in Africa;
   b. Hispanic, that is, a person of Spanish or Portugese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
   c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
   d. American Indian or Alaskan Native, that is, a person having origins in any of the original peoples of North America; or
   e. Female.

(3) The term 'verifiable goal' ~~means for~~ means:
   a. For purposes of the separate prime contract system, that the awarding authority has adopted written guidelines specifying the actions that will be taken to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this ~~section; and~~ section.

~~(4) The term 'verifiable goal' means for~~

b. For purposes of the single-prime contract system, that the awarding authority has adopted written guidelines specifying the actions that the prime contractor must take to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section; the required actions must be documented in writing by the contractor to the appropriate awarding authority.

c. For purposes of an alternative contracting system authorized by the State Building Commission under G.S. 143-135.26(9), that the awarding authority has adopted written guidelines specifying the action to be taken to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section.

The State, counties, municipalities, and all other public bodies shall award public building contracts without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible bid or bids.

(g) Exceptions. -- This section shall not apply to:

(1) The purchase and erection of prefabricated or relocatable buildings or portions thereof, except that portion of the work which must be performed at the construction site.

(2) The erection, construction, alteration, or repair of a building when the cost thereof is one hundred thousand dollars ($100,000) or less."

Sec. 6. G.S. 143-129(a) reads as rewritten:

"(a) No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than twenty thousand dollars ($20,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131."

Sec. 7. G.S. 143-132(b) reads as rewritten:

"(b) For purposes of contracts bid in the alternative between the separate-prime and single-prime contracts, pursuant to G.S. ~~143-128(b),~~ 143-128(c) or (d), each single-prime bid shall constitute a competitive bid in each of the four subdivisions or branches of work listed in G.S. 143-128(a), and each full set of separate-prime bids shall constitute a competitive single-prime bid in meeting the requirements of subsection (a) of this section. If there are at least three single-prime bids but there is not at least one full set of separate-prime bids, no separate-prime bids shall be opened."

Sec. 8. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-135.8. Prequalification.*

Bidders may be prequalified for any public construction project."

Sec. 9. G.S. 143-135.25(a) reads as rewritten:

"(a) A State Building Commission is created within the Department of Administration to develop procedures to direct and guide the State's capital facilities development and management ~~program.~~ program and to perform the duties created under this Article."

Sec. 10. G.S. 143-135.26 is amended by adding a new subdivision to read:

"(9) Effective July 1, 1996, to authorize a State agency, a local governmental unit, or any other entity subject to the provisions of G.S. 143-129 to use a method of contracting not authorized under G.S. 143-128, including the use of the single-prime contracting system without soliciting bids under both the single and separate prime contract systems. An authorization under this subdivision for an alternative contracting method shall be granted only under the following conditions:

a. An authorization shall apply only to a single project.

b. The entity seeking authorization must demonstrate to the Commission that the alternative contracting method is necessary because the project cannot be reasonably completed under the methods authorized under G.S. 143-128 or for such other reasons as the Commission, pursuant to its rules and criteria, deems appropriate and in the public's interest.

c. The authorization must be approved by two-thirds of the members of the Commission present and voting.

The Commission shall not waive the requirements of G.S. 143-129 or G.S. 143-132 for public contracts unless otherwise authorized by law."

Sec. 11. Sections 1, 2, and 10 of this act and this section are effective upon ratification. Section 5 of this act becomes effective July 1, 1996, and applies to contracts for which bids are solicited on or after that date. The remainder of this act becomes effective October 1, 1995. Section 3 applies to the award of contracts on or after October 1, 1995. Sections 4 and 6 apply to contracts for which bids are solicited on or after October 1, 1995.

In the General Assembly read three times and ratified this the 30th day of June, 1995.

S.B. 706 CHAPTER 368

AN ACT TO AUTHORIZE CABARRUS COUNTY TO ESTABLISH AN AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) AND FOOD STAMP WORKFARE PILOT PROGRAM AND AN ADJUNCT DEMONSTRATION PROGRAM MODIFYING THE JOBS PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any law to the contrary, the Department of Human Resources shall designate Cabarrus County as a pilot county for the purpose of conducting a demonstration Workfare Program for certain Aid to Families with Dependent Children (AFDC) and Food Stamp recipients. Immediately upon the ratification of this act, the Department shall seek all federal waivers necessary to allow this demonstration program. To the extent that this act or the program established pursuant to it conflicts with any State law, the program supersedes that law.

Sec. 2. (a) The Cabarrus County demonstration Workfare Program for certain AFDC and Food Stamp recipients shall:

(1) Provide job opportunities to all able-bodied AFDC and Food Stamp recipients who:
   a. Are not eligible for the JOBS program;
   b. Are between the ages of 18 and 64;
   c. Are not caring for a child under one year of age;
   d. Are working less than 30 hours per week; and
   e. Are not full-time high school students or the equivalent;

(2) Create job opportunities in the public, the private, nonprofit, and the private, for-profit sector, primarily in the human services areas by allowing Cabarrus County to use grant diversions, consisting of the AFDC benefits and the cash value of Food Stamps that would be paid to otherwise eligible recipients to match employer funds, to subsidize the employment of these recipients. Human service area jobs will meet such socially necessary needs as day care work, nursing home aide work, and in-home aide work;

(3) Allow wages paid to these recipients, which contain grant-diverted funds, to be exempt from income for purposes of determining eligibility for assistance;

(4) Structure payment of wages to these recipients such that they will be considered income, in order to make recipients eligible for the federal earned income tax credit;

(5) Create work experience opportunities in the private sector more realistically to reflect the world of work;

(6) Require these recipients to participate in the development of an opportunity contract, outlining the responsibilities of the recipient and agency, as well as the incentives for compliance and the sanctions for noncompliance;

(7) Require all these recipients who participate in the program to pursue and accept employment, full or part time, subsidized or

unsubsidized, as a condition for continued eligibility for AFDC and Food Stamp assistance;

(8) Require job search training of all participants;

(9) Require monitored job search of all participants until employment is found or until other work activities of up to 40 hours per week are in place;

(10) Provide child care by allowing Cabarrus County to use grant diversions, consisting of the Family Support Act child day care subsidies that would be paid to otherwise eligible recipients, and transportation as required;

(11) Create a positive work incentive by providing wage incentives to participants who are in compliance with the program, equal to the first thirty dollars ($30.00) and one-third of the remainder of monthly gross income for a period of up to two years;

(12) Provide enhanced Food Stamp benefits after participants are employed and are in program compliance by using the thirty dollar ($30.00) and one-third of the remainder wage incentive as an income exemption;

(13) Provide time-limited sanctions, or withholding of benefits for the adult members of the household of all AFDC and Food Stamp benefits for noncompliance, beginning with the first sanction period equal to the time necessary to come into compliance, second sanction period -- four months, third and subsequent sanctions -- eight months; and

(14) Provide automatic Medicaid coverage for children and pregnant adults of sanctioned families by transferring the children administratively to the Medicaid for Indigent Children (MIC) Program and by transferring the pregnant adults administratively to the Medicaid for Pregnant Women (MPW) Program.

(b) An adjunct program to the demonstration program prescribed in subsection (a) of this section shall:

(1) Require AFDC recipients who are mandated JOBS participants to pursue and accept employment, full or part time, subsidized or unsubsidized, as part of their job plan. The maximum number of hours delegated to job activities, including employment, shall be 40 hours per week. AFDC recipients who are JOBS eligible and who are caring for children under five years of age shall, in this program, not be limited to 20 hours per week;

(2) Require AFDC recipients who are potential JOBS participants to engage in job search until either employment is found or they become JOBS eligible; and

(3) Ensure that sanctions for noncompliance and provision of Medicaid coverage shall be as provided in subdivisions (13) and (14) of subsection (a) of this section.

Sec. 3. This act shall be funded by Cabarrus County using the grant diversions and administrative transfers prescribed in Section 2 of this act, together with federal and State administrative funding allocated to Cabarrus County for the public assistance and JOBS programs.

Sec. 4. The Department of Human Resources shall evaluate the Cabarrus County Demonstration Project and report to the General Assembly on or before March 1, 1997.

Sec. 5. This act becomes effective July 1, 1995 and shall expire on July 1, 1997.

In the General Assembly read three times and ratified this the 30th day of June, 1995.

S.B. 858 **CHAPTER 369**

AN ACT TO CLARIFY THE LAW REGARDING CONTRACTS FOR SCHOOL ADMINISTRATORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-287.1 reads as rewritten:

"*§ 115C-287.1. Method of employment of principals, assistant principals, supervisors, and directors.*

(a) ~~Tenure of a school administrator who is not ineligible for career status as provided by G.S. 115C-325(c)(3) shall be determined in accordance with the provisions of G.S. 115C-325.~~

(1) Beginning July 1, 1995, all persons employed as school administrators shall be employed pursuant to this section.

(2) Notwithstanding G.S. 115C-287.1(a)(1), the following school administrators shall be employed pursuant to G.S. 115C-325:

a. School administrators who, as of July 1, 1995, are serving in a principal or supervisor position with career status in that position; and

b. School administrators who, as of July 1, 1995, are serving in a principal or supervisor position and who are eligible to achieve career status on or before June 30, 1997.

A school administrator shall cease to be employed pursuant to G.S. 115C-325 if the school administrator: (i) voluntarily relinquishes career status or the opportunity to achieve career status through promotion, resignation, or otherwise; or (ii) is dismissed or demoted or whose contract is not renewed pursuant to G.S. 115C-325.

(3) For purposes of this section, school administrator means a ~~principal, assistant principal, supervisor, or director: Provided, however, nothing~~ a:

a. Principal;

b. Assistant principal;

c. Supervisor; or

d. Director,

whose major function includes the direct or indirect supervision of teaching or of any other part of the instructional program.

(4) Nothing in this section shall be construed to confer career status on any assistant principal or director, or to make an assistant principal eligible for career status as an assistant principal or a director eligible for career status as a director.

(b) Local boards of education shall employ school administrators who are ineligible for career status as provided by G.S. 115C-325(c)(3), upon the recommendation of the superintendent. ~~The first contract~~ All contracts between the school administrator and the local board of education shall be for two to four ~~years; subsequent contracts shall be for terms of four years. Contracts shall be renewed only at the end of the contract period.~~ years, ending on June 30 of the final 12 months of the contract. The local board of education may, with the written consent of the school administrator, extend, renew, or offer a new school administrator's contract at any time after the first 12 months of the contract so long as the term of the new, renewed, or extended contract does not exceed four years. Rolling annual contract renewals are not allowed. Nothing in this section shall be construed to prohibit the filling of an administrative position on an interim or temporary basis.

(c) The term of employment shall be stated in a written contract that shall be entered into between the local board of education and the school administrator. The school administrator shall not be dismissed or demoted during the term of the contract except for the grounds and by the procedure by which a career teacher may be dismissed or demoted as set forth in G.S. 115C-325.

(d) ~~If the superintendent elects not to recommend the reemployment of a school administrator at the end of the contract's term, the superintendent shall notify the school administrator in writing at least 30 days prior to the end of the contract's term that the school administrator will not be offered reemployment beyond the contract's term. In the notice the superintendent shall state the reason the school administrator will not be offered reemployment beyond the contract term. No action by the board of education shall be necessary unless the school administrator requests a hearing before the board in accordance with G.S. 115C-45 and G.S. 115C-305. In the event a hearing is requested, the local board of education shall make the final decision concerning whether the school administrator's contract will be renewed. The cause for nonrenewal may not be for arbitrary, capricious, discriminatory, personal, or political reasons. Any school administrator who is nonrenewed pursuant to this section shall have the right to an appeal in accordance with G.S. 115C-305 and G.S. 115C-325(n).~~

~~At least 90 days prior to the end of the contract term, if a superintendent intends to notify a school administrator that the school administrator will not be offered reemployment beyond the contract term, the superintendent shall give the school administrator and the local board of education written notice that termination is likely and the reason that termination is likely. The school administrator shall have the right to request and to participate in a conference with the superintendent at least 60 days prior to the end of the contract term to discuss the reasons for the possible termination. After the conference the superintendent may either recommend reemployment of the administrator or notify the school administrator that reemployment will not be offered.~~

If a superintendent intends to recommend to the local board of education that the school administrator be offered a new, renewed, or extended contract, the superintendent shall submit the recommendation to the local

board for action. The local board may approve the superintendent's recommendation or decide not to offer the school administrator a new, renewed, or extended school administrator's contract.

If a superintendent decides not to recommend that the local board of education offer a new, renewed, or extended school administrator's contract to the school administrator, the superintendent shall give the school administrator written notice of his or her decision and the reasons for his or her decision no later than May 1 of the final year of the contract. The superintendent's reasons may not be arbitrary, capricious, discriminatory, personal, or political. No action by the local board or further notice to the school administrator shall be necessary unless the school administrator files with the superintendent a written request, within 10 days of receipt of the superintendent's decision, for a hearing before the local board. Failure to file a timely request for a hearing shall result in a waiver of the right to appeal the superintendent's decision. If a school administrator files a timely request for a hearing, the local board shall conduct a hearing pursuant to the provisions of G.S. 115C-45(c) and make a final decision on whether to offer the school administrator a new, renewed, or extended school administrator's contract.

If the local board decides not to offer the school administrator a new, renewed, or extended school administrator's contract, the local board shall notify the school administrator of its decision by June 1 of the final year of the contract. A decision not to offer the school administrator a new, renewed, or extended contract may be for any cause that is not arbitrary, capricious, discriminatory, personal, or political. The local board's decision not to offer the school administrator a new, renewed, or extended school administrator's contract is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.

~~(e) If the superintendent elects to recommend the reemployment of a school administrator for a successive contract or to recommend a new and extended term of a school administrator's contract, the superintendent may do so at any time after a conference pursuant to subsection (d) of this section or more than 90 days prior to the end of the current contract's term. The board of education may approve or disapprove the superintendent's recommendation for any cause that is not arbitrary, capricious, discriminatory, personal, or political. If the board decides not to offer the school administrator employment beyond the end of the contract's term, the school administrator shall be notified in writing of that fact at least 30 days prior to the end of the contract's term.~~

(f) If the superintendent or the local board of education fails to notify a school administrator ~~at least 30 days prior to the end of the contract's term~~ by June 1 of the final year of the contract that the school administrator will not be offered ~~employment beyond the end of the contract term,~~ a new school administrator's contract, the school administrator shall be entitled to 30 days of additional employment or severance pay beyond the date the school administrator receives written notice that ~~the~~ a new contract will not be ~~renewed.~~ offered. ~~The cause for nonrenewal shall not be for arbitrary, capricious, discriminatory, personal, or political reasons.~~

(g) ~~If the school administrator acquired career status as a teacher prior to appointment as a school administrator, a school administrator whose contract as a school administrator is not renewed or extended by the superintendent or the board of education shall be entitled to reassignment and employment in a teaching position.~~ If, prior to appointment as a school administrator, the school administrator held career status as a teacher in the local school administrative unit in which he or she is employed as a school administrator, a school administrator shall retain career status as a teacher if the school administrator is not offered a new, renewed, or extended contract by the local board of education, unless the school administrator voluntarily relinquished that right or is dismissed or demoted pursuant to G.S. 115C-325."

Sec. 2. G.S. 115C-325(c)(3) reads as rewritten:

"(3) Ineligible for Career Status. -- No ~~superintendent, associate superintendent, assistant superintendent or other school employee who is not~~ employee of a local board of education except a teacher as defined by G.S. 115C-325(a)(6) is eligible to obtain career status or continue in a career status if he no longer performs the responsibilities of a teacher as defined in G.S. 115C-325(a)(6). No person who is ~~promoted to or employed~~ working in a ~~principal, director,~~ principal or supervisor position ~~after July 1, 1995, is eligible to obtain~~ who did not acquire career status as a school administrator by June 30, 1997, shall have career status as an administrator. Further, no director or assistant principal is eligible to obtain career status as a school administrator unless he or she has already been conferred that status by the local board of education. ~~If the person acquired career status as a teacher in a local school administrative unit before being promoted to or employed in a principal, director, or supervisor position, the person shall retain career status as a teacher and the person has a right to reassignment to a teaching position in the event the person is not continued in employment as a principal, supervisor, or director.~~"

Sec. 3. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 30th day of June, 1995.

H.B. 142 **CHAPTER 370**

AN ACT TO MAKE TECHNICAL CHANGES RELATING TO THE REPEAL OF THE INTANGIBLES TAX AND TO OTHER TAX LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-501(1), as added by Chapter 41 of the 1995 Session Laws, reads as rewritten:

"(1) The Department of Revenue in performing the duties imposed by G.S. 105-275.2 and by Article 15 of this Chapter."

Sec. 2. G.S. 105-275.2, as recodified and amended by Chapter 41 of the 1995 Session Laws, reads as rewritten:

"§ 105-275.2. *Reimbursement to counties and municipalities for repeal of State tax on intangible personal property.*

(a) Reimbursement for Repeal of Tax on Money on Deposit, Money on Hand, and Funds on Deposit with Insurance Companies. -- On or before August 30 of each year, the Secretary of Revenue shall allocate ~~for distribution~~ to each county ~~and the municipalities in the county~~ the amount allocated to the county under this subsection in 1990.

(a1) Reimbursement for Partial Repeal of Tax on Accounts Receivable. -- On or before August 30 of each year, the Secretary of Revenue shall ~~distribute~~ allocate to counties ~~and municipalities~~ an amount equal to forty percent (40%) of the tax collected on accounts receivable under former Article 7 of this Chapter (repealed) during the 1989-90 fiscal year. The Secretary shall allocate this amount among the counties in proportion to the amount allocated to each county under former G.S. 105-213 (repealed) in August 1994.

(a2) Reimbursement for Repeal of Tax on Accounts Receivable, Bonds, Stocks, and Foreign Trust Interests. -- On or before August 30 of each year, the Secretary of Revenue shall ~~distribute~~ allocate to counties the sum of ninety-five million three hundred thirty-one thousand nine hundred twenty-seven dollars ~~($95,331,927) to counties and municipalities.~~ ($95,331,927). The Secretary shall allocate this amount among the counties in proportion to the amount allocated to each county under former G.S. 105-213 (repealed) in August 1994.

(a3) Distribution Between County and Its Municipalities. -- The amounts allocated to each county under this section shall be allocated between the county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. In dividing these amounts between each county and its municipalities, the Secretary of Revenue shall treat taxes levied by a merged school administrative unit described in G.S. 115C-513 in a part of the unit located in a county as taxes levied by the county in which that part is located.

After making these allocations, the Secretary shall certify to the State Controller and to the State Treasurer the amount to be distributed to each county and municipality in the State. The State Controller shall then issue a warrant on the State Treasurer to each county and municipality in the amount certified.

For the purpose of computing the distribution to any county and the municipalities located in the county for any year with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the county and the municipalities in the county, the Department shall use the last property valuation of the public service company that has been certified.

The chair of each board of county commissioners and the mayor of each municipality shall report to the Secretary of Revenue information requested by the Secretary to enable the Secretary to allocate the amount distributed by this section. If a county or municipality fails to make a requested report

within the time allowed, the Secretary may disregard the county or municipality in allocating the amount distributed by this section.

(b) Restrictions on Use. -- The amount distributed to each county and municipality shall be used by the county or municipality in proportion to property tax levies made by it for the various funds and activities of the county or municipality, unless the county or municipality has pledged the amount to be distributed to it under this section in payment of a loan agreement with the North Carolina Solid Waste Management Capital Projects Financing Agency. A county or municipality that has pledged amounts distributed under this section in payment of a loan agreement with the Agency may apply the amount the loan agreement requires.

(c) Repealed by Session Laws 1995, c. 41, s. 3.

(d) Source. -- Funds distributed under this section shall be drawn from collections received under Division II of Article 4 of this Chapter."

Sec. 3. G.S. 105-134.6(c)(4a), as enacted by Chapter 42 of the General Statutes, reads as rewritten:

"(4a) The amount by which each of the taxpayer's personal exemptions ~~have~~ has been increased for inflation under section 151(d)(4)(A) of the ~~Code, less~~ Code. This amount is reduced by two hundred fifty dollars ($250.00) for each personal exemption if the taxpayer's adjusted gross income (AGI), as calculated under the Code, is less than the following amounts:

Filing Status	AGI
Married, filing jointly	$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000.

For the purposes of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage."

Sec. 4. G.S. 105-130.9(4) reads as rewritten:

"(4) ~~That portion~~ The amount of a contribution ~~that is claimed as a~~ for which the taxpayer claimed a tax credit pursuant to G.S. 105-130.34 shall not be eligible for a deduction ~~pursuant to~~ under this section. The amount of the credit claimed with respect to the contribution is not, however, required to be added to income under G.S. 105-130.5(a)(10)."

Sec. 5. G.S. 105-130.40(c)(3) reads as rewritten:

"(3) The county's rank in a ranking of counties by percentage growth in population from ~~lowest to highest.~~ highest to lowest."

Sec. 6. G.S. 105-151.17(c)(3) reads as rewritten:

"(3) The county's rank in a ranking of counties by percentage growth in population from ~~lowest to highest.~~ highest to lowest."

Sec. 7. Sections 3 and 4 of this act are effective for taxable years beginning on or after January 1, 1995. Sections 1 and 2 of this act become

effective July 1, 1995. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1995.

S.B. 701 **CHAPTER 371**

AN ACT TO PROHIBIT THE STATE BOARD OF EDUCATION FROM ADOPTING OR ENFORCING ANY RULE THAT REQUIRES ALGEBRA I AS A GRADUATION STANDARD OR AS A REQUIREMENT FOR A HIGH SCHOOL DIPLOMA FOR STUDENTS WHO ARE IDENTIFIED AS LEARNING DISABLED IN THE AREA OF MATHEMATICS, AND TO DIRECT THE STATE BOARD OF EDUCATION TO SUSPEND THE APPLICATION OF THIS RULE TO THESE STUDENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-81(b) reads as rewritten:

"(b) The Basic Education Program shall include course requirements and descriptions similar in format to materials previously contained in the standard course of study and it shall provide:

(1) A core curriculum for all students that takes into account the special needs of children and includes appropriate modifications for the learning disabled, the academically gifted, and the students with discipline and emotional problems;
(2) A set of competencies, by grade level, for each curriculum area;
(3) A list of textbooks for use in providing the curriculum;
(4) Standards for student performance and promotion based on the mastery of competencies, including standards for graduation, that take into account children with special needs and, in particular, include appropriate modifications;
(5) A program of remedial education;
(6) Required support programs;
(7) A definition of the instructional day;
(8) Class size recommendations and requirements;
(9) Prescribed staffing allotment ratios;
(10) Material and equipment allotment ratios;
(11) Facilities standards; and
(12) Any other information the Board considers appropriate and necessary.

The State Board shall not adopt or enforce any rule that requires Algebra I as a graduation standard or as a requirement for a high school diploma for any student whose individualized education program (i) identifies the student as learning disabled in the area of mathematics and (ii) states that this learning disability will prevent the student from mastering Algebra I."

Sec. 2. The rule adopted by the State Board of Education that establishes Algebra I as a requirement for a high school diploma is hereby suspended in its application to any student whose individualized education program on or after the effective date of this act (i) identifies the student as

learning disabled in the area of mathematics and (ii) states that this learning disability will prevent the student from mastering Algebra I. However, the State Board may modify this rule to require reasonable course substitutions for these students.

Sec. 3. This act is effective upon ratification, and expires on June 30, 1997.

In the General Assembly read three times and ratified this the 5th day of July, 1995.

H.B. 783 **CHAPTER 372**

AN ACT TO PERMIT THE ISSUANCE OF CERTAIN PERMITS ON SCHOOL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-301(f) reads as rewritten:

"(f) Unlawful Possession or Use. -- As illustration, but not limitation, of the general prohibition stated in G.S. 18B-102(a), it shall be unlawful for:

(1) Any person to consume fortified wine, spirituous liquor, or mixed beverages or to offer such beverages to another person:
   a. On the premises of an ABC store, or
   b. Upon any property used or occupied by a local board, or
   c. On any public road, street, highway, or sidewalk.

(2) Any person to display publicly at an athletic contest fortified wine, spirituous liquor, or mixed beverages;

(3) Any person to permit any fortified wine, spirituous liquor, or mixed beverages to be possessed or consumed upon any premises not authorized by this Chapter;

(4) Any person to possess or consume any fortified wine, spirituous liquor, or mixed beverages upon any premises where such possession or consumption is not authorized by law, or where the person has been forbidden to possess or consume that beverage by the owner or other person in charge of the premises;

(5) Any person to possess on any of the premises described in subsections (a) through (c) a greater amount of fortified wine or spirituous liquor than authorized by this Chapter;

(6) Any permittee, other than a mixed beverage or culinary permittee, to possess spirituous liquor or mixed beverages on his licensed premises.

(7) Any person to possess on his person or consume malt beverages or unfortified wine upon any property owned or leased by a local board of education and used by the local board of education for school purposes. Provided, however, the prohibition in G.S. 18B-102(a) and this subdivision shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board."

Sec. 2. G.S. 18B-1006(a) reads as rewritten:

"(a) School and College Campuses. -- No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit. Provided, however, this subsection shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1995.

S.B. 223 **CHAPTER 373**

AN ACT TO AUTHORIZE CRIMINAL RECORD CHECKS OF PUBLIC SCHOOL EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. Article 22 of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 6. Criminal History Checks.

"*§ 115C-332. School personnel criminal history checks.*

(a) As used in this section:

(1) 'Criminal history' means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina

Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subparagraph, such crimes also include similar crimes under federal law or under the laws of other states.

(2) 'School personnel' means any:

a. Employee of a local board of education whether full-time or part-time, or

b. Independent contractor or employee of an independent contractor of a local board of education, if the independent contractor carries out duties customarily performed by school personnel,

whether paid with federal, State, local, or other funds, who has significant access to students. School personnel includes substitute teachers, driver training teachers, bus drivers, clerical staff, and custodians.

(b) Each local board of education shall adopt a policy on whether and under what circumstances an applicant for a school personnel position shall be required to be checked for a criminal history before the applicant is offered an unconditional job. Each local board of education shall apply its policy uniformly in requiring applicants for school personnel positions to be checked for a criminal history. A local board of education that requires a criminal history check for an applicant may employ an applicant conditionally while the board is checking the person's criminal history and making a decision based on the results of the check.

A local board of education shall not require an applicant to pay for the criminal history check authorized under this subsection.

(c) The Department of Justice shall provide to the local board of education the criminal history from the State and National Repositories of Criminal Histories of any applicant for a school personnel position in the local school administrative unit for which a local board of education requires a criminal history check. The local board of education shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the local board, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The local board of education shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors.

The local board of education shall not require an applicant to pay for being fingerprinted.

(d) The local board of education shall review the criminal history it receives on a person. The local board shall determine whether the results of the review indicate that the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school

personnel and shall use the information when making employment decisions and decisions with regard to independent contractors. The local board shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors.

(e) The local board of education shall provide to the State Board of Education the criminal history it receives on a person who is certificated, certified, or licensed by the State Board of Education. The State Board of Education shall review the criminal history and determine whether the person's certificate or license should be revoked in accordance with State laws and rules regarding revocation.

(f) All the information received by the local board of education through the checking of the criminal history or by the State Board of Education in accordance with subsection (d) of this section is privileged information and is not a public record but is for the exclusive use of the local board of education or the State Board of Education. The local board of education or the State Board of Education may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There shall be no liability for negligence on the part of a local board of education, or its employees, or the State Board of Education, or its employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Chapter 31 of Chapter 143 of the General Statutes."

Sec. 2. G.S. 114-19.2(a) reads as rewritten:

"(a) The Department of Justice may provide a criminal record check to the local board of education of a person who is employed in a public school in that local school district or of a person who has applied for employment in a public school in that local school district, if the employee or applicant consents to the record check. The Department may also provide a criminal record check of school personnel as defined in G.S. 115C-332 by fingerprint card to the local board of education from National Repositories of Criminal Histories, in accordance with G.S. 115C-332. The information shall be kept confidential by the local board of education as provided in Article 21A of Chapter 115C."

Sec. 3. The State Board of Education, in consultation with the Division of Criminal Information of the Department of Justice, shall adopt rules to implement this act.

Sec. 4. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 5th day of July, 1995.

S.B. 530 CHAPTER 374

AN ACT TO PROVIDE THAT THE COUNTY PUBLISH A NOTICE OF A ROAD CLOSURE HEARING RATHER THAN PUBLISHING THE FULL ROAD CLOSURE RESOLUTION AS CURRENTLY REQUIRED BY LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-241 reads as rewritten:

"§ *153A-241. Closing public roads or easements.*

A county may permanently close any public road or any easement within the county and not within a city, except public roads or easements for public roads under the control and supervision of the Department of Transportation. The board of commissioners shall first adopt a resolution declaring its intent to close the public road or easement and calling a public hearing on the question. The board shall cause ~~the resolution~~ a notice of the public hearing reasonably calculated to give full and fair disclosure of the proposed closing to be published once a week for ~~four~~ three successive weeks before the hearing, a copy of the resolution to be sent by registered or certified mail to each owner as shown on the county tax records of property adjoining the public road or easement who did not join in the request to have the road or easement closed, and a notice of the closing and public hearing to be prominently posted in at least two places along the road or easement. At the hearing the board shall hear all interested persons who appear with respect to whether the closing would be detrimental to the public interest or to any individual property rights. If, after the hearing, the board of commissioners is satisfied that closing the public road or easement is not contrary to the public interest and (in the case of a road) that no individual owning property in the vicinity of the road or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the board may adopt an order closing the road or easement. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county.

Any person aggrieved by the closing of a public road or an easement may appeal the board of commissioners' order to the appropriate division of the General Court of Justice within 30 days after the day the order is adopted. The court shall hear the matter de novo and has jurisdiction to try the issues arising and to order the road or easement closed upon proper findings of fact by the trier of fact.

No cause of action founded upon the invalidity of a proceeding taken in closing a public road or an easement may be asserted except in an action or proceeding begun within 30 days after the day the order is adopted.

Upon the closing of a public road or an easement pursuant to this section, all right, title, and interest in the right-of-way is vested in those persons owning lots or parcels of land adjacent to the road or easement, and the title of each adjoining landowner, for the width of his abutting land, extends to the center line of the public road or easement. However, the right, title or interest vested in an adjoining landowner by this paragraph remains subject to any public utility use or facility located on, over, or under the road or

easement immediately before its closing, until the landowner or any successor thereto pays to the utility involved the reasonable cost of removing and relocating the facility."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1995.

S.B. 597 **CHAPTER 375**

AN ACT TO PROVIDE THAT A DEFENDANT WHO IS CONVICTED OF A DRUG TRAFFICKING CONSPIRACY IS NOT ELIGIBLE FOR INTERMEDIATE SANCTIONS UNDER THE STRUCTURED SENTENCING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1340.13(h) reads as rewritten:

"(h) Exceptions When Extraordinary Mitigation Shall Not Be Used. -- The court shall not impose an intermediate sanction pursuant to subsection (g) of this section if:

(1) The offense is a Class A or Class B1 felony;

(2) The offense is a drug trafficking offense under ~~G.S. 90-95(h);~~ G.S. 90-95(h) or a drug trafficking conspiracy offense under G.S. 90-95(i); or

(3) The defendant has five or more points as determined by G.S. 15A-1340.14."

Sec. 2. This act becomes effective December 1, 1995, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 5th day of July, 1995.

H.B. 63 **CHAPTER 376**

AN ACT TO PROVIDE FOR A SPECIALTY LICENSE FOR TRANSPORT REFRIGERATION CONTRACTORS, TO CHANGE THE COMPOSITION OF THE LICENSING BOARD, AND TO AMEND OTHER PROVISIONS OF THE LAW GOVERNING REFRIGERATION CONTRACTORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-52 reads as rewritten:

"*§ 87-52. State Board of Refrigeration Examiners; appointment; term of office.*

For the purpose of carrying out the provisions of this Article, the State Board of Refrigeration Examiners is created, consisting of seven members appointed by the Governor to serve seven-year staggered terms. The Board shall consist of one member who is a wholesaler or a manufacturer of refrigeration equipment; one member from an engineering school of The ~~Greater~~ University of North Carolina, one member from the Division of Public Health of The ~~Greater~~ University of North Carolina, two licensed refrigeration contractors, ~~and two members who have~~ one member who has

no ties with the construction industry to represent the interest of the public at ~~large.~~ large, and one member with an engineering background in refrigeration. The term of office of one member shall expire each year. Vacancies occurring during a term shall be filled by appointment of the Governor for the unexpired term. Whenever the term 'Board' is used in this Article, it means the State Board of Refrigeration Examiners. No Board member shall serve more than one complete consecutive term."

Sec. 2. G.S. 87-58 reads as rewritten:

"*§ 87-58. Definitions; contractors licensed by Board; examinations.*

(a) As applied in this Article, 'refrigeration trade or business' is defined to include all persons, firms or corporations engaged in the installation, maintenance, servicing and repairing of refrigerating machinery, equipment, devices and components relating thereto and within limits as set forth in the codes, laws and regulations governing refrigeration installation, maintenance, service and repairs within the State of North Carolina or any of its political subdivisions, provided however, that this Article shall not apply to the replacement of lamps and fuses and to the installation and servicing of ~~appliances and equipment~~ domestic household refrigerators and freezers or domestic ice-making appliances connected by means of attachment plug-in devices to suitable receptacles which have been permanently installed, ~~'or devices using gas as a fuel, or ice using or storing equipment';~~ and provided, further, that the provisions of this Article shall not repeal any wording, phrase, or paragraph as set forth in North Carolina General Statutes, Chapter 87, Article 2; and provided, further, that this Article shall not apply to employees of persons, firms, or corporations or persons, firms or corporations, not engaged in refrigeration contracting as herein defined, that install, maintain and service their own refrigerating machinery, equipment and devices. The provisions of this Article shall not apply to any person, firm or corporation engaged in the business of selling, repairing and installing any air-conditioning units, devices or systems for the purpose of cooling offices. buildings, houses, works, manufacturing plants, or any machinery, manufactured article or processing of material.

(b) The ~~phrase~~ term 'refrigeration contractor' ~~is hereby defined to be~~ means a person, firm or corporation engaged in the business of refrigeration contracting.

(b1) The term 'transport refrigeration contractor' means a person, firm, or corporation engaged in the business of installation, maintenance, servicing, and repairing of transport refrigeration.

(c) Any person, firm or corporation who for valuable consideration engages in the refrigeration business or trade as herein defined shall be deemed and held to be in the business of refrigeration contracting.

(d) In order to protect the public health, comfort and safety, the Board shall prescribe the standard of experience to be required of an applicant for license and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating cost, fundamentals of installation and design as ~~same~~ they pertain to refrigeration; and as a result of ~~such~~ the examination, the Board shall issue a certificate of license in refrigeration to applicants who pass the required examination and a license shall be obtained in

accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in the business of refrigeration ~~contracting as herein defined. Each~~ contracting. The Board shall prescribe standards for and issue licenses for refrigeration contracting and for transport refrigeration contracting. A transport refrigeration contractor license is a specialty license that authorizes the licensee to engage only in transport refrigeration contracting. A refrigeration contractor licensee is authorized to engage in transport refrigeration and all other aspects of refrigeration contracting.

Each application for examination shall be accompanied by a check, post-office money order or cash in the amount of the annual license fee required by this Article. Regular examinations shall be given in the months of April and October of each year and additional examinations may be given at ~~such other~~ times ~~as~~ the Board ~~may deem~~ deems wise and necessary. Any person may demand in writing a special examination and upon payment by the applicant of the cost of holding ~~such~~ the examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for ~~such~~ the examination. A person who fails to pass any examination shall not be reexamined until the next regular examination.

(e) Repealed by Session Laws 1979, c. 843, s. 1.

(f) Licenses Granted without an Examination. -- Persons who had an established place of business prior to July 1, 1979, and who produce satisfactory evidence that they are engaged in the refrigeration business as herein defined in any city, town or other area in which Article 5 of Chapter 87 of the General Statutes did not previously apply shall be granted a certificate of license, without examination, upon application to the Board and payment of the license fee, provided ~~such~~ completed applications shall be made prior to June 30, 1981.

(g) The current license issued in accordance with the provisions of this Article shall be posted in the business location of the licensee, and its number shall appear on all proposals or contracts and requests for permits issued by municipalities.

(h) A transport refrigeration contractor having an established place of business doing transport refrigeration contracting prior to October 1, 1995, shall be granted a transport refrigeration contracting specialty license, without examination, if the person produces satisfactory evidence the person is engaged in transport refrigeration contracting, pays the required license fee, and applies to the Board prior to January 1, 1997. The current specialty license shall be posted in accordance with subsection (g) of this section.

(i) Nothing in this Article shall relieve the holder of a license issued under this section from complying with the building or electrical codes, statutes, or ordinances of the State or of any county or municipality or from responsibility or liability for negligent acts in connection with refrigeration contracting work. The Board shall not be liable in damages, or otherwise, for the negligent acts of licensees."

Sec. 3. G.S. 87-59 reads as rewritten:

"*§ 87-59. Revocation or suspension of license for cause.*

(a) The Board shall have power to revoke or suspend the license of any refrigeration contractor who is guilty of any fraud or deceit in obtaining a license, or who fails to comply with any provision or requirement of this Article, or for gross negligence, incompetency, or misconduct, in the practice of or in carrying on the business of a refrigeration contractor as defined in this Article. Any person may prefer charges of ~~such~~ fraud, deceit, gross negligence, incompetency, misconduct, or failure to comply with any provision or requirement of this Article, against any refrigeration contractor who is licensed under the provisions of this Article. All ~~of such~~ charges shall be in writing and verified by the complainant, and ~~such charges~~ shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The Board shall adopt and publish guidelines, consistent with the provisions of this Article, governing the suspension and revocation of licenses.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee. This record shall include, for each licensee, the date and nature of each complaint, investigatory action taken by the Board, any findings of the Board, and the disposition of the matter.

(d) In a case in which the Board is entitled to convene a hearing to consider a charge under this section, the Board may accept an offer to compromise the charge, whereby the accused shall pay to the Board a penalty not to exceed one thousand dollars ($1,000). The funds derived from the penalty shall be deposited into the General Fund.

(e) All records, papers, and other documents containing information collected and compiled by the Board, or its members or employees, as a result of investigations, inquiries, or interviews conducted in connection with a licensing or disciplinary matter, shall not be considered public records within the meaning of Chapter 132 of the General Statutes."

Sec. 4. G.S. 87-61 reads as rewritten:

"*§ 87-61. Violations made misdemeanor; employees of licensees excepted.*

Any person, firm or corporation who shall engage in or offer to engage in, or carry on the business of refrigeration contracting as defined in this Article, without first having been licensed to engage in ~~such~~ the business, or businesses, as required by the provisions of this Article; or any person, firm or corporation holding a refrigeration license under the provisions of this Article who shall practice or offer to practice or carry on any type of refrigeration contracting not authorized by ~~said~~ the license; or any person, firm or corporation who shall give false or forged evidence of any kind to the Board, or any member thereof, in obtaining a license, or who shall falsely impersonate any other practitioner of like or different name, or who shall use an expired or revoked license, or who shall violate any of the provisions of this Article, shall be guilty of a Class 2 misdemeanor. The Board may, in its discretion, use its funds to defray the costs and expenses, legal or otherwise, in the prosecution of any violation of this Article. Employees, while working under the supervision and jurisdiction of a person, firm or corporation licensed in accordance with the provisions of

this Article, shall not be construed to have engaged in the business of refrigeration contracting."

Sec. 5. This act becomes effective October 1, 1995. G.S. 87-59(d), as enacted by this act, applies to hearings convened on or after the effective date. The term of the public member of the Board that is currently scheduled to expire first shall expire on October 1, 1995, and the initial member with the engineering background in refrigeration appointed pursuant to this act shall serve from the date of appointment to January 1, 2001.

In the General Assembly read three times and ratified this the 5th day of July, 1995.

S.B. 1012 **CHAPTER 377**

AN ACT TO IMPROVE THE REGULATION OF PETROLEUM UNDERGROUND STORAGE TANKS AND THE CLEANUP OF LEAKING PETROLEUM UNDERGROUND STORAGE TANKS.

The General Assembly of North Carolina enacts:

Section 1. Part 2B of Article 21A of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-215.94V. Standards for petroleum underground storage tank cleanup.*

(a) Legislative findings and intent.

(1) The General Assembly finds that:

a. The goals of the underground storage tank program are to protect human health and the environment. Maintaining the solvency of the Commercial Fund and the Noncommercial Fund is essential to these goals.

b. The sites at which discharges or releases from underground storage tanks occur vary greatly in terms of complexity, soil types, hydrogeology, other physical and chemical characteristics, current and potential future uses of groundwater, and the degree of risk that each site may pose to human health and the environment.

c. Risk-based corrective action is a process that recognizes this diversity and utilizes an approach where assessment and remediation activities are specifically tailored to the conditions and risks of a specific site.

d. Risk-based corrective action gives the State flexibility in requiring different levels of cleanup based on scientific analysis of different site characteristics, and allowing no action or no further action at sites that pose little risk to human health or the environment.

e. A risk-based approach to the cleanup of environmental damage can adequately protect human health and the environment while preventing excessive or unproductive cleanup efforts, thereby assuring that limited resources are directed toward those sites that pose the greatest risk to human health and the environment.

(2) The General Assembly intends:

a. To direct the Commission to adopt rules that will provide for risk-based assessment and cleanup of discharges and releases from petroleum underground storage tanks. These rules are intended to combine groundwater standards that protect current and potential future uses of groundwater with risk-based analysis to determine the appropriate cleanup levels and actions.

b. That these rules apply to all discharges or releases that are reported on or after the date the rules become effective in order to ascertain whether cleanup is necessary, and if so, the appropriate level of cleanup.

c. That these rules may be applied to any discharge or release that has been reported at the time the rules become effective at the discretion of the Commission.

d. That these rules and decisions of the Commission and the Department in implementing these rules facilitate the completion of more cleanups in a shorter period of time.

e. That neither the Commercial Fund nor the Noncommercial Fund be used to clean up sites where the Commission has determined that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission.

f. That until rules implementing a risk-based approach to assessment and cleanup are adopted, the Commission implement the foregoing principles to the maximum extent possible under existing rules.

(b) The Commission shall adopt rules to establish a risk-based approach for the assessment, prioritization, and cleanup of discharges and releases from petroleum underground storage tanks. The rules shall address, at a minimum, the circumstances where site-specific information should be considered, criteria for determining acceptable cleanup levels, and the acceptable level or range of levels of risk to human health and the environment.

(c) The Commission may require an owner or operator or a landowner eligible for reimbursement under G.S. 143-215.94E(b1) to determine the degree of risk to human health and the environment that is posed by a discharge or release from a petroleum underground storage tank.

(d) If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission, the Commission shall notify the owner, operator, or landowner who makes the determination required by subsection (c) of this section that no cleanup, further cleanup, or further action will be required unless the Commission later determines that the discharge or release poses an unacceptable level of risk or a potentially unacceptable level of risk to human health or the environment.

(e) If the Commission concludes under subsection (d) of this section that no cleanup, no further cleanup, or no further action will be required, the Department shall not pay or reimburse any costs otherwise payable or

reimbursable under this Article from either the Commercial or Noncommercial Fund, other than reasonable and necessary to conduct the risk assessment required by this section, unless:

(1) Cleanup is ordered or damages are awarded in a finally adjudicated judgment in an action against the owner or landowner.

(2) Cleanup is required or damages are agreed to in a consent judgment approved by the Department prior to its entry by the court.

(3) Cleanup is required or damages are agreed to in a settlement agreement approved by the Department prior to its execution by the parties.

(4) The payment or reimbursement is for costs that were incurred prior to or as a result of notification of a determination by the Commission that no cleanup, no further cleanup, or no action is required.

(5) The payment or reimbursement is for costs that were incurred as a result of a later determination by the Commission that the discharge or release poses a threat or potential threat to human health or the environment as provided in subsection (d) of this section.

(f) This section shall not be construed to limit the authority of the Commission to require investigation, initial response, and abatement of a discharge or release pending a determination by the Commission under subsection (d) of this section as to whether cleanup, further cleanup, or further action will be required.

(g) Subsections (c) through (e) of this section apply only to assessments and cleanups in progress or begun on or after the date on which the rules adopted by the Commission pursuant to subsection (b) of this section become effective."

Sec. 2. Part 2B of Article 21A of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-215.94U. Registration of petroleum commercial underground storage tanks; operation of petroleum underground storage tanks; operating permit required.*

(a) The owner or operator of each petroleum commercial underground storage tank shall annually obtain an operating permit from the Department for the facility at which the tank is located. The Department shall issue an operating permit only if the owner or operator:

(1) Has notified the Department of the existence of all tanks as required by 40 Code of Federal Regulations § 280.22 (1 July 1994 Edition) or 42 U.S.C. § 6991a, if applicable, at the facility;

(2) Has paid all fees required under G.S. 143-215.94C for all commercial petroleum underground storage tanks located at the facility;

(3) Complies with applicable release detection requirements set out in rules adopted pursuant to this Chapter, notifies the Department of the method or combination of methods of leak detection in use, and certifies to the Department that all applicable release detection

requirements are being met for all petroleum underground storage tanks located at the facility;

(4) If applicable, complies with the Stage I vapor control requirements set out in 15A North Carolina Administrative Code 2D.0928, effective 1 March 1991, notifies the Department of the method or combination of methods of vapor control in use, and certifies to the Department that all Stage I vapor control requirements are being met for all petroleum underground storage tanks located at the facility; and

(5) Has substantially complied with the air quality, groundwater quality, and underground storage tank standards applicable to any activity in which the applicant has previously engaged and has been in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. In determining substantial compliance, the compliance history of the owner or operator and any parent, subsidiary, or other affiliate of the owner, operator, or parent may be considered.

(b) The operating permit shall be issued at the time the commercial underground storage annual tank operating fee required under G.S. 143-215.94C(a) is paid and shall be valid from the first day of the month in which the fee is due through the last day of the last month for which the fee is paid in accordance with the schedule established by the Department under G.S. 143-215.94C(b).

(c) No person shall place a petroleum product, and no owner or operator shall cause a petroleum product to be placed, into an underground storage tank at a facility for which the owner or operator does not hold a currently valid operating permit.

(d) The Department shall issue an operating permit certificate for each facility that meets the requirements of subsection (a) of this section. The operating permit certificate shall identify the number of tanks at the facility and shall conspicuously display the date on which the permit expires. Except for the owner or operator, no person shall be liable under subsection (c) of this section if an unexpired operating permit certificate is displayed at the facility, unless the person knows or has reason to know that the owner or operator does not hold a currently valid operating permit for the facility.

(e) The Department may revoke an operating permit only if the owner or operator fails to continuously meet the requirements set out in subdivisions (1) through (4) of subsection (a) of this section. If the Department revokes an operating permit, the owner or operator of the facility for which the operating permit was issued shall immediately surrender the operating permit certificate to the Department, unless the revocation is stayed pursuant to G.S. 150B-33. An owner or operator may challenge a decision by the Department to deny or revoke an operating permit by filing a contested case under Article 3 of Chapter 150B of the General Statutes. The Secretary shall make the final agency decision regarding the revocation of a permit under this section."

Sec. 3. Part 2B of Article 21A of Chapter 143 of the General Statutes is amended by adding three new sections to read:

"*§ 143-215.94W. Enforcement procedures: civil penalties.*

(a) A civil penalty of not more than ten thousand dollars ($10,000) may be assessed by the Secretary against any person who:

(1) Violates any provision of this Part or rule adopted pursuant to this Part.

(2) Fails to apply for or to secure a permit required by this Part.

(3) Violates or fails to act in accordance with the terms, conditions, or requirements of any permit issued pursuant to this Part.

(4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Part.

(5) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.

(6) Falsifies or tampers with any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.

(7) Knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.

(8) Knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Part or a rule implementing this Part.

(9) Knowingly makes a false statement of a material fact in a rule-making proceeding or contested case under this Part.

(10) Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Part.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed ten thousand dollars ($10,000) per day for so long as the violation continues. A penalty for a continuous violation shall not exceed two hundred thousand dollars ($200,000) for each period of 30 days during which the violation continues.

(c) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment. The Secretary shall make the final decision regarding assessment of a civil penalty under this section.

(e) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d),

remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(f) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (d) of this section, or requests remission of the assessment in whole or in part as provided in subsection (e) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(g) The Secretary may delegate his powers and duties under this section to the Director of the Division of Environmental Management of the Department.

"*§ 143-215.94X. Enforcement procedures: criminal penalties.*

(a) Any person who negligently commits any of the offenses set out in subdivisions (1) through (9) of G.S. 143-215.94W(a) shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed fifteen thousand dollars ($15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars ($200,000) for each period of 30 days during which a violation continues.

(b) Any person who knowingly and willfully commits any of the offenses set out in subdivisions (1) through (5) of G.S. 143-215.94W(a) shall be guilty of a Class I felony, which may include a fine not to exceed one hundred thousand dollars ($100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars ($500,000) for each period of 30 days during which a violation continues. For the purposes of this subsection, the phrase 'knowingly and willfully' shall mean intentionally and consciously as the courts of this State, according to the principles of common law interpret the phrase in the light of reason and experience.

(c) (1) Any person who knowingly commits any of the offenses set out in subdivisions (1) through (5) of G.S. 143-215.94W(a) and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a Class C felony, which may include a fine not to exceed two hundred fifty thousand dollars ($250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars ($1,000,000) for each period of 30 days during which a violation continues.

(2) For the purposes of this subsection, a person's state of mind is knowing with respect to:
   a. His conduct, if he is aware of the nature of his conduct;
   b. An existing circumstance, if he is aware or believes that the circumstance exists; or
   c. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

(3) Under this subsection, in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:
   a. The person is responsible only for actual awareness or actual belief that he possessed; and
   b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

(4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession; or of medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.

(d) No proceeding shall be brought or continued under this section for or on account of a violation by any person who has previously been convicted of a federal violation based upon the same set of facts.

(e) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information. Consistent with the principles of common law, the subjective mental state of defendants may be inferred from their conduct.

(f) For the purposes of the felony provisions of this section, a person's state of mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that is the subject of the prosecution is the result of any of the following occurrences or circumstances:

(1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.

(2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.

(3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.

(4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.

(5) Violations causing no significant harm to the environment or risk to the public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.

(6) Occasional, inadvertent, short-term violations causing no significant harm to the environment or risk to the public health, safety, or welfare. If the violation occurs within 30 days of a prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.

(g) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under State criminal offenses may apply to prosecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they may be applied in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

"*§ 143-215.94Y. Enforcement procedures; injunctive relief.*

Whenever the Department has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Part, any of the terms of any permit issued pursuant to this Part, or a rule implementing this Part, the Department may, either before or after the institution of any other action or proceeding authorized by this Part, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the superior court of the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Part or the regulations of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Part."

Sec. 4. G.S. 143-215.94A reads as rewritten:

"*§ 143-215.94A. Definitions.*

Unless a different meaning is required by the context, the following definitions shall apply throughout this ~~Part;~~ Part and Part 2B of this Article:

(0) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1994 Edition), which defines 'affiliate' as a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

(1) 'Commercial Fund' means the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund established pursuant to this Part.

(2) 'Commercial underground storage tank' means any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of petroleum products, the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. The term 'commercial underground storage tank' does not include any:

a. Farm or residential underground storage tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
b. Underground storage tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;
c. Underground storage tank of more than 1,100 gallon capacity used for storing heating oil for consumptive use on the premises where stored by four or fewer households;
d. Septic tank;
e. Pipeline facility (including gathering lines) regulated under:
    1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 et seq.);
    2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.); or
    3. Any intrastate pipeline facility regulated under State laws comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;
f. Surface impoundment, pit, pond, or lagoon;
g. Storm water or waste water collection system;
h. Flow-through process tank;
i. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
j. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

(3) 'Council' means the North Carolina Petroleum Underground Storage Tank Funds Council.

(3a) 'Facility' means an underground storage tank, or two or more underground storage tanks located in close proximity to each other and having the same owner or operator, that are located on a single tract of land or on contiguous tracts of land that are

owned or controlled by the same person. As used in this subdivision, the terms 'owner', 'operator', and 'person' include any affiliate, parent, and subsidiary of the owner, operator, or person, respectively. The owner or person having control of the land on which an underground storage tank is located, or on which two or more underground storage tanks are located, need not be the owner or operator of the underground storage tank or underground storage tanks. The term 'facility', as defined in this subdivision, does not apply to a 'pipeline facility', as that phrase is used in subdivisions (2) and (7) of this section.

(4) 'Heating oil' means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, or No. 6 technical grades of fuel oil; other residual fuel oils, including Navy Special Fuel Oil and Bunker C; and other fuels when used as substitutes for one of these fuel oils for the purpose of heating.

(5) 'Loan Fund' means the Groundwater Protection Loan Fund.

(6) 'Noncommercial Fund' means the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund established pursuant to this Part.

(7) 'Noncommercial underground storage tank' means any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of petroleum products, the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. The term 'noncommercial storage tank' does not include any:

a. Commercial underground storage tanks;
b. Septic tank;
c. Pipeline facility (including gathering lines) regulated under:
   1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 et seq.);
   2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.); or
   3. Any intrastate pipeline facility regulated under State laws comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;
d. Surface impoundment, pit, pond, or lagoon;
e. Storm water or waste water collection system;
f. Flow-through process tank;
g. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
h. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

(8) 'Operator' means any person in control of, or having responsibility for, the operation of an underground storage tank.

(9) 'Owner' means:

a. In the case of an underground storage tank in use on 8 November 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of petroleum products; and
b. In the case of an underground storage tank in use before 8 November 1984, but no longer in use on or after that date, any person who owned such tank immediately before the discontinuation of its use.

(9a) 'Parent' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1994 Edition), which defines 'parent' as an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

(10) 'Petroleum' or 'petroleum product' means crude oil or any fraction thereof which is a liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), including any such liquid which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel. The terms 'petroleum' and 'petroleum product' do not include any hazardous substance as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601(14) as amended; any substance regulated as a hazardous waste under Subtitle C of Title II of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended; or any mixture of petroleum or a petroleum product containing any such hazardous substance or hazardous waste in greater than de minimis quantities.

(11) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1994 Edition), which defines 'subsidiary' as an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person."

Sec. 5. G.S. 143-215.94B reads as rewritten:

"*§ 143-215.94B. Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.*

(a) There is established under the control and direction of the Department the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This Commercial Fund shall be a nonreverting revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, other monies paid to it or recovered on behalf of the Commercial Fund, and fees paid pursuant to this Part.

(b) The Commercial Fund shall be used for the payment of the following costs up to an aggregate maximum of one million dollars ($1,000,000) per occurrence resulting from a discharge or release of a petroleum product from a commercial underground storage ~~tank that at the time the discharge or release is discovered or reported is beneath the surface of the ground or has been removed within the preceding 120 days;~~ tank:

(1) For discharges or releases discovered or reported between 30 June 1988 and 31 December 1991 inclusive, the cleanup of

environmental damage as required by G.S. 143-215.94E(a) in excess of fifty thousand dollars ($50,000) per occurrence.

(2) For discharges or releases discovered on or after 1 January 1992 and reported between 1 January 1992 and 31 December 1993 inclusive, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars ($20,000) per occurrence.

(2a) For discharges or releases discovered and reported on or after 1 January 1994 and prior to 1 January 1995, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars ($20,000) if the owner or operator (i) notifies the Department prior to 1 January 1994 of its intent to permanently close the tank in accordance with applicable regulations or to upgrade the tank to meet the requirements that existing underground storage tanks must meet by 22 December 1998, (ii) commences closure or upgrade of the tank prior to 1 July 1994, and (iii) completes closure or upgrade of the tank prior to 1 January 1995.

(3) For discharges or releases reported on or after 1 January 1994, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars ($20,000) if, prior to the discharge or release, the commercial underground storage tank from which the discharge or release occurred met the performance standards applicable to tanks installed after 22 December 1988 or met the requirements that existing underground storage tanks must meet by 22 December 1998.

(4) For discharges or releases reported on or after 1 January 1994 from a commercial underground storage tank that does not qualify under subdivision (2a) of this subsection or does not meet the standards in subdivision (3) of this subsection, sixty percent (60%) of the costs per occurrence of the cleanup of environmental damage as required by G.S. 143-215.94E(a) that exceeds twenty thousand dollars ($20,000) but is not more than one hundred fifty-seven thousand five hundred dollars ($157,500) and one hundred percent (100%) of the costs above this amount, up to the limits established in this section.

(5) Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars ($100,000) per occurrence.

(6) Reimbursing the State for damages or other costs incurred as a result of a loan from the Loan Fund. The per occurrence limit does not apply to reimbursements to the State under this subdivision.

(b1) ~~In the case of a discharge or release of a petroleum product from a commercial underground storage tank that is discovered and reported more than 120 days after the tank has been removed from the ground and prior to 1 July 1994, the Commercial Fund shall be used for the payment of costs resulting from the discharge or release in excess of the costs for which the owner or operator is responsible under subsection (b) of this section up to~~

~~an aggregate of one million dollars ($1,000,000) per occurrence. For the purpose of determining the costs for which the owner or operator is responsible under subsection (b) of this section, the discharge or release shall be considered to have been discovered and reported on the date the underground storage tank was removed from the ground. Costs shall be paid under this subsection only if the owner establishes that the:~~

~~(1) Tank was removed from the ground on or after 22 December 1988;~~

~~(2) Discharge was not discovered at the time the tank was removed; and~~

~~(3) Tank was removed in compliance with all applicable federal and State laws, regulations, and rules in force at the time the tank was removed.~~

In the event that two or more discharges or releases at any one facility, the first of which was discovered or reported on or after 30 June 1988, result in more than one plume of soil, surface water, or groundwater contamination, the Commercial Fund shall be used for the payment of the costs of the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of the multiple discharge amount up to the applicable aggregate maximum specified in subsections (b) and (b2) of this section. The multiple discharge amount shall be calculated as follows:

(1) Each discharge or release shall be considered separately as if it were the only discharge or release, and the cost for which the owner or operator is responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this section, whichever are applicable, shall be determined for each discharge or release. For each discharge or release for which subdivision (4) of subsection (b) of this section is applicable, the cost for which the owner or operator is responsible, for the purpose of this subsection, shall be seventy-five thousand dollars ($75,000). For purposes of this subsection, two or more discharges or releases that result in a single plume of soil, surface water, or groundwater contamination shall be considered as a single discharge or release.

(2) The multiple discharge amount shall be the lesser of:

a. The sum of all the costs determined as set out in subdivision (1) of this subsection; or

b. The product of the highest of the costs determined as set out in subdivision (1) of this subsection multiplied by one and one-half (1½).

(b2) In the event that the aggregate costs per occurrence described in subsection (b) or (b1) of this section exceed one million dollars ($1,000,000), the Commercial Fund shall be used for the payment of eighty percent (80%) of the costs in excess of one million dollars ($1,000,000) up to a maximum of one million five hundred thousand dollars ($1,500,000). The Department shall not pay or reimburse costs under this subsection unless the owner, operator, or landowner eligible for reimbursement under G.S. 143-215.94E(b1) submits proof that the owner, operator, or landowner eligible for reimbursement under G.S. 143-215.94E(b1) has paid at least twenty percent (20%) of the costs for which reimbursement is sought.

(c) The Commercial Fund is to be available on an occurrence basis, without regard to number of occurrences associated with tanks owned or operated by the same owner or operator.

(d) The Commercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or ~~vehicle;~~ vehicle.

(2) The removal or replacement of any tank, pipe, fitting or related ~~equipment;~~ equipment.

(3) Costs incurred as a result of a discharge or release of petroleum from a transmission ~~pipeline;~~ pipeline.

(4) Costs intended to be paid by the Noncommercial ~~Fund; or~~ Fund.

(5) Costs associated with the administration of any underground storage tank program other than the program administered pursuant to this Part.

(6) Costs paid or reimbursed by or from any source other than the Commercial Fund, including but not limited to, any payment or reimbursement made under a contract of insurance.

(e) The Commercial Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3."

Sec. 6. G.S. 143-215.94C reads as rewritten:

"§ *143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.*

(a) The owner or operator of a commercial petroleum underground storage tank shall pay to the Secretary for deposit into the Commercial Fund an annual operating fee according to the following schedule:

(1) For each petroleum commercial underground storage tank of 3,500 gallons or less capacity -- one hundred fifty dollars ($150.00).

(2) For each petroleum commercial underground storage tank of more than 3,500 gallon capacity -- two hundred twenty-five dollars ($225.00).

(b) The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January and remaining in use on or after 1 December of that year, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For a petroleum commercial underground storage tank that is first placed in use in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. For a petroleum commercial underground storage tank that is permanently removed from use in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months in the calendar year preceding the permanent removal from use. In calculating the pro rata annual operating fee for a tank that is first placed in use or permanently removed during a calendar year under the preceding two sentences, a partial month shall count as a

month, except that where a tank is permanently removed and replaced by another tank, the total of the annual operating fee for the tank that is removed and the replacement tank shall not exceed the annual operating fee for the replacement tank. The annual operating fee shall be due and payable on the first day of the month in accordance with a staggered schedule established by the Department. The Department shall implement a staggered schedule to the end that the total amount of fees to be collected by the Department is approximately the same each quarter. A person who owns or operates more than one petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. The fee for all commercial underground storage tanks located at the same facility shall be due at the same time. A person who owns or operates 12 or more commercial petroleum storage tanks may request that the total of all fees be paid in four equal payments to be due on the first day of each calendar ~~quarter.~~ quarter, provided that the fee for all commercial underground storage tanks located at the same facility shall be due at the same time.

(c) Beginning no later than sixty days before the first due date of the annual operating fee imposed by this section, any person who deposits a petroleum product in a commercial underground storage tank that would be subject to the annual operating fee shall, at least once in each calendar year during which such deposit of a petroleum product is made, notify the owner or operator of the duty to pay the annual operating fee. The requirement to notify pursuant to this subsection does not constitute a duty owed by the person depositing a petroleum product in a commercial underground storage tank to the owner or operator and the person depositing a petroleum product in an underground storage tank shall not incur any liability to the owner or operator for failure to give notice of the duty to pay the operating fee.

(d) Repealed by Session Laws 1991, c. 538, s. 3.1.

(e) An owner or operator of a commercial underground storage tank who fails to pay ~~a tank~~ an annual operating fee due under this section within 30 days of the date that the fee is due shall pay, in addition to the fee, a late penalty of five dollars ($5.00) per day per commercial underground storage tank, up to a maximum equal to the ~~tank~~ annual operating fee due. The Department may waive a late penalty in whole or in part if:

(1) The late penalty was incurred because of the late payment or nonpayment of an annual operating fee by a previous owner or operator.

(2) The late penalty was incurred because of a billing error for which the Department is responsible.

(3) Where the late penalty was incurred because the annual operating fee was not paid by the owner or operator due to inadvertence or accident.

(4) Where payment of the late penalty will prevent the owner or operator from complying with any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases."

Sec. 7. G.S. 143-215.94D(d) reads as rewritten:

"(d) The Noncommercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or ~~vehicle;~~ vehicle.
(2) The removal or replacement of any tank, pipe, fitting or related ~~equipment;~~ equipment.
(3) Costs incurred as a result of a discharge or release of petroleum from a transmission ~~pipeline;~~ pipeline.
(4) Costs intended to be paid for by the Commercial ~~Fund; or~~ Fund.
(5) Costs associated with the administration of any underground storage tank program other than the program administered pursuant to this Part.
(6) Costs paid or reimbursed by or from any source other than the Noncommercial Fund, including, but not limited to, any payment or reimbursement made under a contract of insurance."

Sec. 8. G.S. 143-215.94E reads as rewritten:

"§ *143-215.94E. Rights and obligations of the owner and operator.*

(a) Upon a determination that a discharge or release of petroleum from an underground storage tank has occurred, the owner or operator shall notify the Department pursuant to G.S. 143-215.85. The owner or operator shall immediately undertake to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article.

(b) In the case of a discharge or release from a commercial underground storage tank where the owner or operator has been identified and has proceeded with cleanup, the owner or operator may elect to have the Commercial Fund pay or reimburse the owner or operator for any costs described in ~~G.S. 143-215.94B(b)~~ subsection (b) or (b1) of G.S. 143-215.94B that exceed the amounts for which the owner or operator is responsible under that subsection. The sum of payments by the owner or operator and the payments from the Commercial Fund shall not exceed one million dollars ($1,000,000) per discharge or ~~release.~~ release except as provided in G.S. 143-215.94B(b2).

(b1) In the case of a discharge or release from a commercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, if the current landowner of the land in which the commercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Commercial Fund pay or reimburse the current landowner for any costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) that exceed the amounts for which the owner or operator is responsible under that subsection. The current landowner is not eligible for payment or reimbursement until the current landowner has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) for which the owner or operator is responsible. Eligibility for reimbursement under

this subsection may be transferred from a current landowner who has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) to a subsequent landowner. The sum of payments from the Commercial Fund and from all other sources shall not exceed one million dollars ($1,000,000) per discharge or ~~release.~~ release except as provided in G.S. 143-215.94B(b2). This subsection shall not be construed to require a current landowner to cleanup a discharge or release of petroleum from an underground storage tank for which the current landowner is not otherwise responsible. This subsection does not alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner, owner, or operator under other provisions of law. This subsection shall not be construed to limit the authority of the Department to engage in a cleanup under this Article or any other provision of law. In the event that an owner or operator is subsequently identified or located, the Secretary shall seek reimbursement as provided in G.S. 143-215.94G(d). The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b).

(c) In the case of a discharge or release from a noncommercial underground storage tank or a commercial underground storage tank eligible for the Noncommercial Fund in accordance with G.S. 143-215.94D(b), the owner or operator may elect to have the Noncommercial Fund pay or reimburse the owner or operator for the costs described in G.S. 143-215.94D(b1) up to a maximum of one million dollars ($1,000,000) per discharge or release.

(d) In any case where the costs described in G.S. ~~143-215.94B(b)~~ 143-215.94B(b), 143-215.94B(b1), or ~~G.S.~~ 143-215.94D(b1) exceed one million dollars ($1,000,000), or one million five hundred thousand dollars ($1,500,000) if G.S. 143-215.94B(b2) applies, the provisions of Article 21A of this Chapter or any other applicable statute or common law principle regarding liability shall apply for the amount in excess of one million dollars ~~($1,000,000).~~ ($1,000,000) or, if G.S. 143-215.94B(b2) applies, one million five hundred thousand dollars ($1,500,000). Nothing contained in this Part shall limit or modify any liability that any party may have pursuant to Article 21A of this Chapter, any other applicable statute, or at common law.

(e) When the owner or operator pays the costs described in G.S. ~~143-215.94B(b)~~ 143-215.94B(b), 143-215.94B(b1), or ~~G.S.~~ 143-215.94D(b1) resulting from a discharge or release of petroleum from an underground storage tank, the owner or operator may seek reimbursement from the appropriate fund for any costs he may elect to have either the Commercial Fund or the Noncommercial Fund pay in accordance with subsections (b) and (c) of this section. The Department shall reimburse the owner or operator for all costs he may elect to have the appropriate fund pay that the Department determines to be reasonable and necessary and for which appropriate documentation is submitted. The Department may contract for any services necessary to evaluate any claim for reimbursement or compensation from either the Commercial Fund or the Noncommercial Fund, may contract for any expert witness or consultant services necessary to defend any decision to pay or deny any claim for

reimbursement, and may pay the cost of these services from the fund against which the claim is made; provided that in any fiscal year the Department shall not expend from either fund more than one percent (1%) of the unobligated balance of the fund on 30 June of the previous fiscal year. The cost of contractual services to evaluate a claim or for expert witness or consultant services to defend a decision with respect to a claim shall be included as costs under G.S. 143-215.94B(b) and G.S. 143-215.94D(b1). The Commission shall adopt rules governing reimbursement of necessary and reasonable costs. An owner or operator whose claim for reimbursement is denied may appeal a decision of the Department as provided in Article 3 of Chapter 150B of the General Statutes. If the owner or operator is eligible for reimbursement under this section and the cleanup extends beyond a period of three months, the owner or operator may apply to the Department for interim reimbursements to which he is entitled under this section on a quarterly basis.

(e1) The Department shall not pay any third party or reimburse any owner or operator who has paid any third party pursuant to any settlement agreement or consent judgment relating to a claim by or on behalf of a third party for compensation for bodily injury or property damage unless the Department has approved the settlement agreement or consent judgment prior to entry into the settlement agreement or consent judgment by the parties or entry of a consent judgment by the court. The approval or disapproval by the Department of a proposed settlement agreement or consent judgment shall be subject to challenge only in a contested case filed under Chapter 150B of the General Statutes. The Secretary shall make the final agency decision in a contested case proceeding under this subsection.

(f) The Department shall not reimburse any owner or operator until the fund from which reimbursement will be made reaches one million dollars ($1,000,000).

(f1) Any person seeking payment or reimbursement from either the Commercial Fund or the Noncommercial Fund shall certify to the Department that the costs to be paid or reimbursed by the Commercial Fund or the Noncommercial Fund are not eligible to be paid or reimbursed by or from any other source, including any contract of insurance. If any cost paid or reimbursed by the Commercial Fund or the Noncommercial Fund is eligible to be paid or reimbursed by or from another source, that cost shall not be paid from, or if paid shall be repaid to, the Commercial Fund or the Noncommercial Fund. As used in this Part, the phrase 'any other source including any contract of insurance' does not include self-insurance.

(g) No owner or operator shall be reimbursed pursuant to this section, and the Department shall seek reimbursement of the appropriate fund or of the Department for any monies disbursed from the appropriate fund or expended by the Department if:

(1) The owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases;

(2) The discharge or release is the result of the owner's or operator's willful or wanton misconduct; or

(3) The owner or operator has failed to pay any annual tank operating fee due pursuant to G.S. 143-215.94C.

(h) Subdivision (1) of subsection (g) of this section shall not be construed to limit the right of an owner or operator to contest notices of violation or orders issued by the Department. Subdivision (1) of subsection (g) of this section shall not apply to a payment or reimbursement pursuant to this section if, at the time of the discharge or release, the owner or operator holds a valid operating permit as required by G.S. 143-215.94U.

(i) An owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank as provided in G.S. 143-215.94B(b)(2a) shall commence the closure or upgrade prior to 1 July 1994 and shall complete the closure or upgrade prior to 1 January 1995. An owner who notifies the Department of an intention to close or upgrade a commercial underground storage tank and who fails to commence and complete the closure as specified in this subsection is subject to a civil penalty as provided in G.S. 143-215.94K. The provisions of G.S. 143-215.94B(b)(2a) do not apply if an owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank fails to commence or complete the closure or upgrade within the dates specified in this subsection."

Sec. 9. G.S. 143-215.94G reads as rewritten:

"*§ 143-215.94G. Authority of the Department to engage in cleanups; actions for fund reimbursement.*

(a) The Department may use staff, equipment, or materials under its control or provided by other cooperating federal, State, or local agencies and may contract with any agent or contractor it deems appropriate to investigate a release, to develop and implement a cleanup plan, to provide interim alternative sources of drinking water to third parties, and to pay the initial costs for providing permanent alternative sources of drinking water to third parties, and shall pay the costs resulting from commercial underground storage tanks from the Commercial Fund and shall pay the costs resulting from noncommercial underground storage tanks from the Noncommercial Fund, whenever there is a discharge or release of petroleum from any of the following:

(1) A noncommercial underground storage tank.

(2) An underground storage tank whose owner or operator cannot be identified or located.

(3) An underground storage tank whose owner or operator fails to proceed as required by G.S. 143-215.94E(a).

(4) A commercial underground storage tank taken out of operation prior to 1 January 1974 if, when the discharge or release is discovered, neither the owner nor operator owns or leases the land on which the underground storage tank is located.

(a1) Every State agency shall provide to the Department to the maximum extent feasible such staff, equipment, and materials as may be available and useful to the development and implementation of a cleanup program.

(a2) The cost of any action authorized under subsection (a) of this section shall be paid, to the extent funds are available, from the following sources in the order listed:

(1) Any funds to which the State is entitled under any federal program providing for the cleanup of petroleum discharges or releases from underground storage tanks, including, but not limited to, the Leaking Underground Storage Tank Trust Fund established pursuant to 26 U.S.C. § 4081 and 42 U.S.C. § 6991b(h).

(2) The Commercial Fund or the Noncommercial Fund.

(b) Whenever the discharge or release of a petroleum product is from a commercial underground storage tank, the Department may supervise the cleanup of environmental damage required by G.S. 143-215.94E(a). If the owner or operator elects to have the Commercial Fund reimburse or pay for any costs allowed under ~~G.S. 143-215.94B(b),~~ subsection (b) or (b1) of G.S. 143-215.94B, the Department shall require the owner or operator to submit documentation of all expenditures claimed for the purposes of establishing that the owner or operator has spent the amounts required to be paid by the owner or operator pursuant to and in accordance with G.S. 143-215.94E(b). The Department shall allow credit for all expenditures that the Department determines to be reasonable and necessary. The Department may not pay for any costs for which the Commercial Fund was established until the owner or operator has paid the amounts specified in G.S. 143-215.94E(b).

(c) The Secretary shall keep a record of all expenses incurred for the services of State personnel and for the use of the State's equipment and material.

(d) The Secretary shall seek reimbursement through any legal means available, for:

(1) Any costs not authorized to be paid from either the Commercial or the Noncommercial Fund;

(2) The amounts provided for in G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) where the owner or operator of a commercial underground storage tank is later identified or located;

(3) The amounts provided for in G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) where the owner or operator of a commercial underground storage tank failed to proceed as required by G.S. 143-215.94E(a);

(3a) The amounts provided for by G.S. 143-215.94B(b)(5) required to be paid by the owner or operator to third parties for the cost of providing interim alternative sources of drinking water to third parties and the initial cost of providing permanent alternative sources of drinking water to third parties;

(4) Any funds due under G.S. 143-215.94E(g); and

(5) Any funds to which the State is entitled under any federal program providing for the cleanup of petroleum discharges or releases from underground storage tanks.

(e) In the event that a civil action is commenced to secure reimbursement pursuant to subdivisions (1) through (4) of subsection (d) of this section, the Secretary may recover, in addition to any amount due, the costs of the

action, including but not limited to reasonable attorney's fees and investigation expenses. Any monies received or recovered as reimbursement shall be paid into the appropriate fund or other source from which the expenditures were made.

(f) In the event that a recovery equal to or in excess of the amounts required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) is recovered pursuant to subdivisions (2) and (3) of subsection (d) of this section for the costs described in G.S. ~~143-215.94B(b),~~ 143-215.94B(b) or G.S. 143-215.94B(b1), the Department shall transfer funds from the Commercial Fund that would have been paid from the Commercial Fund pursuant to ~~G.S. 143-215.94B(b)~~ subsection (b) or (b2) of G.S. 143-215.94B if the owner or operator had proceeded with the cleanup, but which were paid from the Noncommercial Fund, into the Noncommercial Fund."

Sec. 10. G.S. 143-215.94K reads as rewritten:

"§ *143-215.94K. ~~Penalties.~~ Enforcement.*

The ~~penalties provided in G.S. 143-215.102~~ provisions of G.S. 143-215.94W through G.S. 143-215.94Y shall apply to this ~~Part, provided that no penalty imposed under this Part shall exceed five thousand dollars ($5,000).~~ Part."

Sec. 11. G.S. 143-215.94N reads as rewritten:

"§ *143-215.94N. Applicability.*

(a) The provisions of this Part as they relate to costs paid ~~for by~~ from the Commercial Fund apply only to discharges or releases ~~which~~ that are discovered or reported on or after 30 June ~~1988.~~ 1988 from a commercial underground storage tank.

(b) The provisions of this Part as they relate to costs paid ~~for by~~ from the Noncommercial Fund apply to discharges or releases without regard to the date discovered or reported; however, ~~costs sought pursuant to~~ reimbursement of costs under G.S. 143-215.94G(d)(1), (2), (3), (3a), and (4) shall be for the full amount of the costs paid for from the Noncommercial Fund and shall not be limited pursuant to G.S. 143-215.94E(b) for discharges or releases from commercial underground storage tanks discovered or reported on or before 30 June 1988."

Sec. 12. G.S. 143-215.77(5) reads as rewritten:

"(5) 'Having control over oil or other hazardous substances' shall mean, but shall not be limited to, any person, using, transferring, storing, or transporting oil or other hazardous substances immediately prior to a discharge of such oil or other hazardous substances onto the land or into the waters of the State, and specifically shall include carriers and bailees of such oil or other hazardous substances. This definition shall not include any person supplying or delivering oil into a petroleum underground storage tank that is not owned or operated by the person, unless:

a. The person knows or has reason to know that a discharge is occurring from the petroleum underground storage tank at the time of supply or delivery;

b. The person's negligence is a proximate cause of the discharge; or

c. The person supplies or delivers oil at a facility that requires an operating permit under G.S. 143-215.94U and a currently valid operating permit certificate is not held or displayed at the time of the supply or delivery."

Sec. 13. G.S. 143-215.84 is amended by adding a new subsection to read:

"(a1) The Commission shall not require collection or removal of a discharge or restoration of an affected area under subsection (a) of this section if the person having control over oil or other hazardous substances discharged in violation of this Article complies with rules governing the collection and removal of a discharge and the restoration of an affected area adopted by the Commission pursuant to G.S. 143-214.1 or G.S. 143-215.94V. This subsection shall not be construed to affect the rights of any person under this Article or any other provision of law."

Sec. 14. In order to uniformly implement the operating permit program on 1 July 1996, the Department of Environment, Health, and Natural Resources shall begin issuing operating permits and operating permit certificates required under G.S. 143-215.94U, as enacted by Section 6 of this act, not later than 1 January 1996. The Department shall issue an operating permit and an operating permit certificate for every facility that meets the requirements of G.S. 143-215.94U(a) by 1 July 1996. Operating permits and operating permit certificates issued prior to 1 July 1996 shall be effective on 1 July 1996 and shall expire as provided in G.S. 143-215.94U(b).

Sec. 15. (a) There is appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment, Health, and Natural Resources the sum of two million one hundred thousand dollars ($2,100,000) for the 1995-96 fiscal year and the sum of one million nine hundred fifty thousand dollars ($1,950,000) for the 1996-97 fiscal year to implement the provisions of Part 2A and Part 2B of Article 21A of Chapter 143 of the General Statutes.

(b) There is appropriated from the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment, Health, and Natural Resources the sum of one hundred twenty-five thousand dollars ($125,000) for the 1995-96 fiscal year and the sum of one hundred twenty-five thousand dollars ($125,000) for the 1996-97 fiscal year to implement the provisions of Part 2A and Part 2B of Article 21A of Chapter 143 of the General Statutes.

(c) There is appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Agriculture the sum of one hundred thirty-five thousand dollars ($135,000) for the 1995-96 fiscal year and the sum of ninety thousand dollars ($90,000) for the 1996-97 fiscal year to implement the provisions of Part 2A and Part 2B of Article 21A of Chapter 143 of the General Statutes.

(d) Of the funds appropriated by subsections (a) and (b) of this section, the Department of Environment, Health, and Natural Resources may allocate up to two hundred fifty thousand dollars ($250,000) in equal

amounts from the Commercial Fund and the Noncommercial Fund to identify and evaluate abandoned petroleum underground storage tanks. The Department shall report its findings regarding the extent to which abandoned petroleum underground storage tanks pose a risk to human health or the environment and any recommendations that the Department may have regarding abandoned petroleum underground storage tanks to the Environmental Review Commission by 1 January 1997.

Sec. 16. The provisions of G.S. 143-215.94V, as enacted by Section 1 of this act, shall constitute a recent act of the General Assembly within the meaning of G.S. 150B-21.1(a)(2). The provisions of G.S. 150B-21.1(b) shall not apply to temporary rules implementing G.S. 143-215.94V, as enacted by Section 1 of this act. Notwithstanding G.S. 150B-21.1(d), temporary rules adopted to implement G.S. 143-215.94V, as enacted by Section 1 of this act, may remain in effect until the Environmental Management Commission adopts permanent rules.

Sec. 17. Sections 1, 4, 12, 13, 14, 16, and 17 of this act are effective upon ratification. Section 2 of this act becomes effective 1 July 1996. Sections 3 and 10 of this act become effective 1 January 1996 and apply to offenses occurring or continuing on or after that date. Sections 5, 7, 8, 9, and 11 of this act are effective upon ratification, apply to any pending claim for reimbursement, and apply retroactively to any discharge or release that was discovered or reported on or after 30 June 1988, except that G.S. 143-215.94B(d)(6), as enacted by Section 5 of this act, and G.S. 143-215.94D(d)(6), as enacted by Section 7 of this act, apply only to a discharge or release that was discovered or reported on or after 30 March 1990, and except that G.S. 143-215.94E(f1), as enacted by Section 8 of this act, applies only to payments and reimbursements made on or after the date this act becomes effective and only to costs that are eligible to be paid or reimbursed from either the Commercial Fund or the Noncommercial Fund for a discharge or release that was discovered or reported on or after 30 March 1990. Section 6 of this act becomes effective 1 January 1996. Section 15 of this act is effective on and after 1 July 1995.

In the General Assembly read three times and ratified this the 5th day of July, 1995.

S.B. 987 **CHAPTER 378**

AN ACT TO CREATE THE FELONY OFFENSE OF CONTINUING CRIMINAL ENTERPRISE WITH REGARD TO CRIMINAL OFFENSES THAT ARE NOT DRUG OFFENSES, TO PROVIDE THAT FAILURE OF CERTAIN MERCHANTS TO PRODUCE A RECORD OR AFFIDAVIT WITH CERTAIN INFORMATION INDICATING THE SOURCE OF THE MERCHANT'S PRODUCTS AND TO SHOW THE RECORD OR AFFIDAVIT TO A LAW ENFORCEMENT OFFICER UPON REQUEST IS PRIMA FACIE EVIDENCE THAT THE PRODUCTS ARE STOLEN AND TO MAKE OTHER CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2C.
"Continuing Criminal Enterprise.

"*§ 14-7.20. Continuing criminal enterprise.*

(a) Any person who engages in a continuing criminal enterprise shall be punished as a Class H felon and in addition shall be subject to the forfeiture prescribed in subsection (b) of this section.

(b) Any person who is convicted under subsection (a) of this section of engaging in a continuing criminal enterprise shall forfeit to the State of North Carolina:

(1) The profits obtained by the person in the enterprise, and

(2) Any of the person's interest in, claim against, or property or contractual rights of any kind affording a source of influence over, such enterprise.

(c) For purposes of this section, a person is engaged in a continuing criminal enterprise if:

(1) The person violates any provision of this Chapter, the punishment of which is a felony; and

(2) The violation is a part of a continuing series of violations of this Chapter:

a. Which are undertaken by the person in concert with five or more other persons with respect to whom the person occupies a position of organizer, a supervisory position, or any other position of management; and

b. From which the person obtains substantial income or resources."

Sec. 2. G.S. 105-53(i1) reads as rewritten:

"(i1) Records of Source of New Merchandise. -- Each peddler, itinerant merchant, and specialty market vendor shall keep a written record of the source of new merchandise the merchant offers for sale. The record ~~may~~ must be a receipt or an invoice from the person who sold the merchandise to the ~~merchant or any other documentation that establishes the source of the merchandise.~~ merchant. The invoice or receipt must specifically identify the product being sold by product name and quantity purchased and must contain the complete business name of the seller and a description of the type of business. If the seller was an individual, the receipt or invoice must contain the seller's drivers license number, its state of issuance and expiration date, and the seller's date of birth. The merchant must verify this information by comparing the seller's drivers license to the invoice or receipt and signing the invoice or receipt. A special identification card issued by the Division of Motor Vehicles may be used in place of the seller's drivers license for the purposes of providing and verifying information required under this subsection. If the seller was a corporation, the receipt or invoice must contain the corporation's federal tax identification number, the state of incorporation, the name and address of the corporation's registered agent in this State, if any, and the corporation's principal office address.

The merchant shall keep the record with the new merchandise being offered for sale and shall maintain the record for a period of three years after the merchandise is sold. Upon the request of a law enforcement agent, the merchant shall produce the record of the source of new merchandise the merchant offers for sale. If the merchant fails to produce either the requested record pursuant to this subsection or an affidavit pursuant to subsection (i2) of this section and the law enforcement agent has probable cause to believe the merchant's possession of the merchandise is unlawful, the agent may take the merchandise into custody as evidence. Merchandise impounded under this subsection must be disposed of in accordance with G.S. 15-11.1."

Sec. 3. G.S. 105-53 is amended by adding a new subsection to read:

"(i2) The merchant may satisfy the record requirement of subsection (i1) of this section by producing, in lieu of a receipt or invoice, an affidavit under oath or affirmation identifying the source of the merchandise for which a record is requested, including the name and address of the seller, the license number of any auctioneer seller, and the date and place of purchase of the merchandise."

Sec. 4. G.S. 105-53 is amended by adding a new subsection to read:

"(i3) Notice of Records Requirement. -- A specialty market operator shall conspicuously post in plain view of all specialty market vendors a sign informing all vendors that, effective July 1, 1996, failure to produce, upon the request of a law enforcement agent, either the records required under subsection (i1) of this section or an affidavit pursuant to subsection (i2) of this section is prima facie evidence of possession of stolen property."

Sec. 5. G.S. 105-53(l) reads as rewritten:

"(l) Misdemeanor Violations. -- It shall be a Class 3 misdemeanor for a person to do any of the following:

(1) Fail to obtain a license as required by this section.

(2) Knowingly give false information in the application process for a license or when registering pursuant to subsection (k).

(3) If the person is an itinerant merchant, fail to display the license as required by subsection (i); if the person is a peddler or specialty market operator, fail to produce the license as required by subsection (i); or, if the person is required to do so, fail to comply with subsection (j). Whenever satisfactory evidence shall be presented in any court of the fact that a license was required by this section and such license was not displayed or produced as required by subsection (i), or that permission was required by subsection (j) of this section and was not displayed, the peddler, itinerant merchant, or specialty market operator shall be found not guilty of that violation provided he produces in court a valid license or valid permission which had been issued prior to the time he was charged with such violation.

(4) Fail to provide name, address, or identification upon request as required by subsection (i) or provide false information in response to such a request.

~~(5) Fail to keep a record of the source of new merchandise offered for sale as required by subsection (i1).~~

It shall be a Class 1 misdemeanor to fail to either keep a record of new merchandise offered for sale as required by subsection (i1) of this section or to produce an affidavit pursuant to subsection (i2) of this section. It shall be a Class 1 misdemeanor to falsify a record required by subsection (i1) of this section."

Sec. 6. Effective July 1, 1996, G.S. 105-53(i1), as rewritten by Section 2 of this act, reads as rewritten:

"(i1) Records of Source of New Merchandise. -- Each peddler, itinerant merchant, and specialty market vendor shall keep a written record of the source of new merchandise the merchant offers for sale. The record must be a receipt or an invoice from the person who sold the merchandise to the merchant. The invoice or receipt must specifically identify the product being sold by product name and quantity purchased and must contain the complete business name of the seller and a description of the type of business. If the seller was an individual, the receipt or invoice must contain the seller's drivers license number, its state of issuance and expiration date, and the seller's date of birth. The merchant must verify this information by comparing the seller's drivers license to the invoice or receipt and signing the invoice or receipt. A special identification card issued by the Division of Motor Vehicles may be used in place of the seller's drivers license for the purposes of providing and verifying information required under this subsection. If the seller was a corporation, the receipt or invoice must contain the corporation's federal tax identification number, the state of incorporation, the name and address of the corporation's registered agent in this State, if any, and the corporation's principal office address.

The merchant shall keep the record with the new merchandise being offered for sale and shall maintain the record for a period of three years after the merchandise is sold. Upon the request of a law enforcement agent, the merchant shall produce the record of the source of new merchandise the merchant offers for sale. ~~If the merchant fails~~ A merchant's failure to produce either the requested record pursuant to this subsection or an affidavit pursuant to subsection (i2) of this section within a reasonable time of request by a law enforcement agent ~~and the law enforcement agent has probable cause to believe the merchant's possession of the merchandise is unlawful, the agent may take the merchandise into custody as evidence.~~ is prima facie evidence of possession of stolen property. Pending the production of the requested record or affidavit, the agent may take the merchandise into custody as evidence at the time the request is made. Merchandise impounded under this subsection must be disposed of in accordance with G.S. 15-11.1."

Sec. 7. Except as otherwise provided, this act becomes effective December 1, 1995, and applies to offenses committed on or after that date. Sections 2 and 3 of this act also apply only to merchandise acquired on or after that date. Section 6 of this act becomes effective July 1, 1996, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 5th day of July, 1995.

S.B. 56 **CHAPTER 379**

AN ACT TO REPEAL ANTIQUATED, OBSOLETE, OR UNCONSTITUTIONAL LAWS.

The General Assembly of North Carolina enacts:

COUNTERFEITING SPANISH MILLED DOLLAR

Section 1. (a) G.S. 14-13 reads as rewritten:

"*§ 14-13. Counterfeiting coin and uttering coin that is counterfeit.*

If any person shall falsely make, forge or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging or counterfeiting the resemblance or similitude or likeness of ~~a Spanish milled dollar, or~~ any coin of gold or silver which is in common use and received in the discharge of contracts by the citizens of the State; or shall pass, utter, publish or sell, or attempt to pass, utter, publish or sell, or bring into the State from any other place with intent to pass, utter, publish or sell as true, any such false, forged or counterfeited coin, knowing the same to be false, forged or counterfeited, with intent to defraud any person whatsoever, every person so offending shall be punished as a Class I felon."

(b) G.S. 14-14 reads as rewritten:

"*§ 14-14. Possessing tools for counterfeiting.*

If any person shall have in his possession any instrument for the purpose of making any counterfeit similitude or likeness of ~~a Spanish milled dollar, or other~~ any coin made of gold or silver which is in common use and received in discharge of contracts by the citizens of the State, and shall be duly convicted thereof, the person so offending shall be punished as a Class I felon."

EVIDENCE LAW
REFERENCE TO REPEALED FEDERAL LAW MENTIONING THE WAR DEPARTMENT

Sec. 3. G.S. 8-37.1 reads as rewritten:

"*§ 8-37.1. Finding of presumed death.*

(a) A written finding of presumed death, made by the Secretary of War, the Secretary of the Navy, or other officer or employee of the United States authorized to made such finding, pursuant to the Federal Missing Persons Act (56 Stat. 143, 1092, and P.L. 408, ch. 371, 2d Sess. 78th Cong.; 50 U.S.C. App. Supp. 1001-17), as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office or other place in this State as prima facie evidence of the death of the person therein found to be dead, and the date, circumstances and place of his disappearance. This subsection applies only to findings of presumed death made prior to the effective date of Section 5(b) of Public Law 89-554.

(b) A written finding of presumed death, made by the Secretary pursuant to Chapter 10 of Title 37 of the U.S. Code, P.L. 89-554 as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office, or other place in this State as prima facie evidence of the death of the person therein found to be dead, and the date, circumstances, and

place of his disappearance. This subsection applies only to findings of presumed death made on or after the effective date of Section 5(b) of Public Law 89-554."

NATIONAL DEFENSE HOUSING
REFERENCES TO WAR AND NAVY DEPARTMENTS

Sec. 4. G.S. 157-53(f) reads as rewritten:

"(f) 'Persons engaged in national defense activities,' as used in this Article shall include: enlisted ~~men in the military and naval~~ personnel in the armed services of the United States and employees of the ~~War and Navy Departments~~ Defense Department assigned to duty at ~~military or naval~~ armed forces reservations, posts or bases; and workers engaged or to be engaged in industries connected with and essential to the National Defense Program; and shall include the families of the aforesaid persons who are living with them."

POWERS OF ATTORNEY OF MEMBERS OF ARMED SERVICES
REFERENCE TO 48 STATES

Sec. 5. G.S. 165-39 reads as rewritten:

"§ *165-39. Validity of acts of agent performed after death of principal.*

No agency created by a power of attorney in writing given by a principal who is at the time of execution, or who, after executing such power of attorney, becomes, either (i) a member of the armed forces of the United States, or (ii) a person serving as a merchant seaman outside the limits of the United States, included within the ~~48~~ several states and the District of Columbia; or (iii) a person outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal."

COASTING

Sec. 6. G.S. 20-165 is repealed.

REPEAL OF SPECIAL PROCEDURE FOR WRITS OF QUO WARRANTO
THE WRIT ITSELF HAVING BEEN ABOLISHED

Sec. 9. G.S. 8-77 is repealed.

ABOLISH OATH OF OFFICE FOR OFFICES THAT DO NOT EXIST

Sec. 10. G.S. 11-11 reads as rewritten:

"§ *11-11. Oaths of sundry persons; forms.*

The oaths of office to be taken by the several persons hereafter named shall be in the words following the names of said persons respectively, after

taking the separate oath required by Article VI, Section 7 of the Constitution of North Carolina:

Administrator

You swear (or affirm) that you believe A. B. died without leaving any last will and testament; that you will well and truly administer all and singular the goods and chattels, rights and credits of the said A. B., and a true and perfect inventory thereof return according to law; and that all other duties appertaining to the charge reposed in you, you will well and truly perform, according to law, and with your best skill and ability; so help you, God.

Attorney at Law

I, A. B., do swear (or affirm) that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability; so help me, God.

Attorney General, State District Attorneys and County Attorneys

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the State of North Carolina in the office of Attorney General (district attorney for the State or attorney for the State in the county of . . . . . .); I will, in the execution of my office, endeavor to have the criminal laws fairly and impartially administered, so far as in me lies, according to the best of my knowledge and ability; so help me, God.

Auditor

I, A. B., do solemnly swear (or affirm) that I will well and truly execute the trust reposed in me as auditor, without favor or partiality, according to law, to the best of my knowledge and ability; so help me, God.

Book Debt Oath

You swear (or affirm) that the matter in dispute is a book account; that you have no means to prove the delivery of such articles, as you propose to prove by your own oath, or any of them, but by yourself; and you further swear that the account rendered by you is just and true; and that you have given all just credits; so help you, God.

Book Debt Oath for Administrator

You, as executor or administrator of A. B., swear (or affirm) that you verily believe this account to be just and true, and that there are no witnesses, to your knowledge, capable of proving the delivery of the articles therein charged; and that you found the book or account so stated, and do not know of any other or further credit to be given than what is therein given; so help you, God.

Clerk of the Supreme Court

I, ..., do solemnly swear that I will discharge the duties of the office of clerk of the Supreme Court without prejudice, affection, favor, or partiality, according to law and to the best of my skill and ability, so help me, God.

Clerk of the Superior Court

I, A. B., do swear (or affirm) that, by myself or any other person, I neither have given, nor will I give, to any person whatsoever, any gratuity, fee, gift or reward, in consideration of my election or appointment to the office of clerk of the superior court for the county of . . . . . .; nor have I sold, or offered to sell, nor will I sell or offer to sell, my interest in the said office; I also solemnly swear that I do not, directly or indirectly, hold any other lucrative office in the State; and I do further swear that I will execute the office of clerk of the superior court for the county of . . . . . without prejudice, favor, affection or partiality, to the best of my skill and ability; so help me, God.

Commissioners Allotting a Year's Provisions

You and each of you swear (or affirm) that you will lay off and allot to the petitioner a year's provisions for herself and family, according to law, and with your best skill and ability; so help you, God.

Commissioners Dividing and Allotting Real Estate

You and each of you swear (or affirm) that, in the partition of the real estate now about to be made by you, you will do equal and impartial justice among the several claimants, according to their several rights, and agreeably to law; so help you, God.

~~Commissioner of Wrecks~~

~~I, A. B., do solemnly swear (or affirm) that I will truly and faithfully discharge the duties of a commissioner of wrecks, for the district of. . . . . ., in the county of . . . . . ., according to law; so help me, God.~~

~~Cotton Weigher for Public~~

~~I, ..., public weigher for the city of . . . . . (or as the case may be), do solemnly swear that I will justly, impartially and without any deduction, except as may be allowed by law, weigh all cotton that may be brought to me for that purpose, and tender a true account thereof to the parties concerned, if required so to do; so help me, God.~~

Entry-Taker

I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of entry-taker for the county of . . . . . according to law; so help me, God.

Executor

You swear (or affirm) that you believe this writing to be and contain the last will and testament of A. B., deceased; and that you will well and truly execute the same by first paying his debts and then his legacies, as far as the said estate shall extend or the law shall charge you; and that you will well and faithfully execute the office of an executor, agreeably to the trust and confidence reposed in you, and according to law; so help you, God.

Grand Jury--Foreman of

You, as foreman of this grand inquest for the body of this county, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the State's counsel, your fellows' and your own you shall keep secret; you shall present no one for envy, hatred or malice; neither shall you leave anyone unpresented for fear, favor or affection, reward or the hope of reward; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding; so help you, God.

Grand Jurors

The same oath which your foreman hath taken on his part, you and each of you shall well and truly observe and keep on your part; so help you, God.

Grand Jury--Officer of

You swear (or affirm) that you will faithfully carry all papers sent from the court to the grand jury, or from the grand jury to the court, without alteration or erasement, and without disclosing the contents thereof; so help you, God.

Jury--Officer of

You swear (or affirm) that you will keep every person sworn on this jury in some private and convenient place when in your charge. You shall not suffer any person to speak to them, neither shall you speak to them yourself, unless it be to ask them whether they are agreed in their verdict, but with leave of the court; so help you, God.

Oath for Petit Juror

You do solemnly swear (affirm) that you will truthfully and without prejudice or partiality try all issues in civil or criminal actions that come

before you and give true verdicts according to the evidence, so help you, God.

Justice, Judge, or Magistrate of the General Court of Justice

I, ..., do solemnly swear (affirm) that I will administer justice without favoritism to anyone or to the State; that I will not knowingly take, directly or indirectly, any fee, gift, gratuity or reward whatsoever, for any matter or thing done by me or to be done by me by virtue of my office, except the salary and allowances by law provided; and that I will faithfully and impartially discharge all the duties of . . . . . of the . . . . . Division of the General Court of Justice to the best of my ability and understanding, and consistent with the Constitution and laws of the State; so help me, God.

Register of Deeds

I, A. B., do solemnly swear (or affirm) that I will faithfully and truly, according to the best of my skill and ability, execute the duties of the office of register of deeds for the county of . . . . ., in all things according to law; so help me, God.

Secretary of State

I, A. B., do swear (or affirm) that I will, in all respects, faithfully and honestly execute the office of Secretary of State of the State of North Carolina, during my continuance in office, according to law; so help me, God.

Sheriff

I, A. B., do solemnly swear (or affirm) that I will execute the office of sheriff of . . . . . county to the best of my knowledge and ability, agreeably to law; and that I will not take, accept or receive, directly or indirectly, any fee, gift, bribe, gratuity or reward whatsoever, for returning any man to serve as a juror or for making any false return on any process to me directed; so help me, God.

Law Enforcement Officer

I, A. B., do solemnly swear (or affirm) that I will be alert and vigilant to enforce the criminal laws of this State; that I will not be influenced in any matter on account of personal bias or prejudice; that I will faithfully and impartially execute the duties of my office as a law enforcement officer according to the best of my skill, abilities, and judgment; so help me, God.

~~Standard Keeper~~

~~I, A. B., do swear (or affirm) that I will not stamp, seal or give any certificate for any steelyards, weights or measures, but such as shall, as near as possible, agree with the standard in my keeping; and that I will, in all respects, truly and faithfully discharge and execute the power and trust by law reposed in me, to the best of my ability and capacity; so help me, God.~~

State Treasurer

I, A. B., do swear (or affirm) that, according to the best of my abilities and judgment, I will execute impartially the office of State Treasurer, in all things according to law, and account for the public taxes; and I will not, directly or indirectly, apply the public money to any other use than by law directed; so help me, God.

~~Stray Valuers~~

~~You swear (or affirm) that you will well and truly view and appraise the stray, now to be valued by you, without favor or partiality, according to your skill and ability; so help you, God.~~

Surveyor for a County

I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of surveyor for the county of . . . . . ., according to law; so help me, God.

Treasurer for a County

I, A. B., do solemnly swear (or affirm) that, according to the best of my skill and ability, I will execute impartially the office of treasurer for the county of. . . . . ., in all things according to law; that I will duly and faithfully account for all public moneys that may come into my hands, and will not, directly or indirectly, apply the same, or any part thereof, to any other use than by law directed; so help me, God.

Witness to Depose before the Grand Jury

You swear (or affirm) that the evidence you shall give to the grand jury, upon this bill of indictment against A. B., shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in a Capital Trial

You swear (or affirm) that the evidence you shall give to the court and jury in this trial, between the State and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in a Criminal Action

You swear (or affirm) that the evidence you shall give to the court and jury in this action between the State and A. B. shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in Civil Cases

You swear (or affirm) that the evidence you shall give to the court and jury in this cause now on trial, wherein A. B. is plaintiff and C. D. defendant, shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness to Prove a Will

You swear (or affirm) that you saw C. D. execute (or heard him acknowledge the execution of) this writing as his last will and testament; that you attested it in his presence and at his request; and that at the time of its execution (or at the time the execution was acknowledged) he was, in your opinion, of sound mind and disposing memory; so help you, God.

Witness before a Legislative Committee or Commission

You swear (or affirm) that the testimony you shall give to the committee (or commission) shall be the truth, the whole truth, and nothing but the truth; so help you, God.

General Oath

Any officer of the State or of any county or township, the term of whose oath is not given above, shall take an oath in the following form:

I, A. B., do swear (or affirm) that I will well and truly execute the duties of the office of . . . . . according to the best of my skill and ability, according to law; so help me, God."

ABOLISHED DUTIES OF GOVERNOR'S PRIVATE SECRETARY

Sec. 11. G.S. 147-15.1 is repealed.

REFERENCE TO THE DOORKEEPER OF THE HOUSE AND SENATE

Sec. 13. G.S. 147-2 reads as rewritten:

"§ *147-2. Legislative officers.*

The legislative officers are:

(1) Fifty Senators;
(2) One hundred and twenty members of the House of Representatives;
(3) A Speaker of the House of Representatives;
(4) A clerk and assistants in each house;
(5) A ~~doorkeeper~~ Sergeant-at-arms and assistants in each house;

(6) As many subordinates in each house as may be deemed necessary."

ABOLITION OF REFERENCES TO CONSTABLE

Sec. 14. (a) G.S. 1-339.50 reads as rewritten:

"*§ 1-339.50. Officer's return of no sale for want of bidders; penalty.*

When a sheriff or other officer returns upon an execution that he has made no sale for want of bidders, he must state in his return the several places he has advertised and offered for sale the property levied on; and an officer failing to make such statement is on motion subject to a fine of forty ~~dollars; and every constable, for a like omission of duty, is subject to a fine of ten~~ dollars, for the use and benefit of the plaintiff in the execution; for which, on motion of the plaintiff, judgment shall be granted by the court to which, or by justice to whom, the execution shall be returned. Nothing in, nor any recovery under, this section is a bar to any action for a false return against the sheriff or other officer."

(b) G.S. 46-10 reads as rewritten:

"*§ 46-10. Commissioners to meet and make partition; equalizing shares.*

The commissioners, who shall be summoned by the sheriff, ~~or any constable,~~ must meet on the premises and partition the same among the tenants in common, or joint tenants, according to their respective rights and interests therein, by dividing the land into equal shares in point of value as nearly as possible, and for this purpose they are empowered to subdivide the more valuable tracts as they may deem best, and to charge the more valuable dividends with such sums of money as they may think necessary, to be paid to the dividends of inferior value, in order to make an equitable partition."

(c) G.S. 62-62 reads as rewritten:

"*§ 62-62. Issuance and service of subpoenas.*

All subpoenas for witnesses to appear before the Commission, a division of the Commission or a hearing commissioner or examiner and notice to persons or corporations, shall be issued by the Commission or its chief clerk or a deputy clerk and be directed to any ~~sheriff, constable~~ sheriff or other officer authorized by law to serve process issued out of the superior courts, who shall execute the same and make due return thereof as directed therein, under the penalties prescribed by law for a failure to execute and return the process of any court. The Commission shall have the authority to require the applicant for a subpoena for persons and documents to make a reasonable showing that the evidence of such persons or documents will be material and relevant to the issue in the proceeding."

(d) G.S. 162-13 reads as rewritten:

"*§ 162-13. To receipt for process.*

Every ~~sheriff, coroner or constable~~ sheriff or coroner shall, when requested, give his receipt for all original and mesne process placed in his hands for execution, to the party suing out the same, his agent or attorney; and such receipt shall be admissible as evidence of the facts therein stated, against such officer and his sureties, in any suit between the party taking the receipt and such officer and his sureties."

(e) G.S. 163-24 reads as rewritten:

"*§ 163-24. Power of State Board of Elections to maintain order.*

The State Board of Elections shall possess full power and authority to maintain order, and to enforce obedience to its lawful commands during its sessions, and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of the State Board of Elections or its chairman, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chairman, and attested by its secretary, commit the person so offending to the common jail of the county for a period not exceeding 30 days. Such order shall be executed by any sheriff ~~or constable~~ to whom the same shall be delivered, or if a sheriff ~~or constable~~ shall not be present, or shall refuse to act, by any other person who shall be deputed by the State Board of Elections in writing, and the keeper of the jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment: Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar ($200.00) bond with the clerk of the superior court and appeal to the superior court for a trial on the merits of his commitment."

CONTRACTS WITH CHEROKEE INDIANS

Sec. 15. G.S. 22-3 is repealed.

SPEAKER BAN

Sec. 17. Article 22 of Chapter 116 of the General Statutes is repealed.

RESIGN-TO-RUN

Sec. 18. Article 11A of Chapter 163 of the General Statutes is repealed.

AMEND 1937 LAW ALLOWING MOTOR VEHICLES TO USE ACETYLENE HEADLAMPS

Sec. 18.1. G.S. 20-132 reads as rewritten:

"§ *20-132. Acetylene lights.*

Motor vehicles eligible for a Historic Vehicle Owner special registration plate under G.S. 20-79.4 may be equipped with two acetylene headlamps of approximately equal candlepower when equipped with clear plane-glass fronts, bright six-inch spherical mirrors, and standard acetylene five-eighths foot burners not more and not less and which do not project a glaring or dazzling light into the eyes of approaching drivers."

REPEAL 1924 LAW MAKING IT UNLAWFUL TO DISPLAY AN EMBLEM OF AN ORGANIZATION ON A MOTOR VEHICLE UNLESS THE OWNER IS A MEMBER

Sec. 18.2. G.S. 20-137 is repealed.

REPEAL 1784 LAW MAKING IT UNLAWFUL TO SELL FIREWOOD IN INCORPORATED TOWN OTHER THAN BY THE CORD

Sec. 18.3. G.S. 66-8 is repealed.

REPEAL 1941 LAW REQUIRING SECONDHAND WATCHES TO BE TAGGED AS SUCH

Sec. 18.4. Article 7 of Chapter 66 of the General Statutes is repealed.

REPEAL 1943 LAW FORBIDDING PHOTOGRAPHERS FROM SELLING COUPONS REDEEMABLE FOR PHOTOGRAPHS WITHOUT POSTING A BOND, WHICH WAS HELD UNCONSTITUTIONAL IN 1951

Sec. 18.5. Article 12 of Chapter 66 of the General Statutes is repealed.

Sec. 20. Except as provided herein, this act is effective upon ratification but does not affect pending litigation.

In the General Assembly read three times and ratified this the 6th day of July, 1995.

S.B. 681 **CHAPTER 380**

AN ACT TO MODIFY THE PURPOSES FOR WHICH GREENSBORO MAY USE THE PROCEEDS OF ITS LOCAL OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. Section 6 of Chapter 22 of the 1991 Session Laws reads as rewritten:

"*Sec. 6.* Disposition of Taxes Collected.

(a) Until retirement of the debt to finance renovation and expansion of the Greensboro War Memorial Coliseum arena, the proceeds of the occupancy tax shall be used as provided in this subsection. The city or the county shall remit twenty percent (20%) of the net proceeds of the tax to the Greensboro/Guilford County Tourism Development Authority. 'Net proceeds' means gross proceeds less the cost to the city or the county of administering and collecting the tax, not to exceed five percent (5%) of the gross proceeds of the tax. The authority shall use the funds remitted to it under this subsection only for activities and programs promoting and encouraging travel and tourism.

The City of Greensboro shall receive the balance of the net proceeds and shall use these funds only (i) to finance the renovation and expansion of the Greensboro War Memorial Coliseum ~~arena.~~ arena, (ii) to finance the renovation and expansion of the remainder of the Greensboro War Memorial Complex and acquisition of property in the vicinity of the Complex, and (iii) for maintenance of the Complex. In the event that ~~these~~ the funds exceed the amount required for ~~debt payments,~~ these purposes, the excess shall be retained in a special reserve fund and used (i) to make debt payments where additional funds are needed in any payment ~~period,~~ period or (ii) to call a portion of the ~~debt, or (iii) to pay for maintenance to the arena,~~ debt.

(b) Upon retirement of the full debt to finance the renovation and expansion of the Greensboro War Memorial Coliseum arena, the proceeds of the occupancy tax shall be used as provided in this subsection. The city

or the county shall remit twenty-five percent (25%) of the net proceeds of the tax to the Greensboro/Guilford County Tourism Development Authority. The authority shall use the funds remitted to it under this subsection only for activities and programs promoting and encouraging travel and tourism.

The city shall receive the balance of the net proceeds and shall use these funds only (i) for specific tourist-related events, programs, and activities, such as arts, recreational, or cultural events, or (ii) for promoting, improving, constructing, financing, or acquiring facilities or attractions that enhance the development of tourism. Before expending the proceeds for any of the purposes listed in this subsection, the city shall submit each project to the Greensboro/Guilford County Tourism Development Authority. The board of directors of that authority shall make recommendations to the city with respect to the projects within 60 days after submission by the city."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1995.

H.B. 667 **CHAPTER 381**

AN ACT TO ALLOW CERTAIN MUNICIPALITIES TO USE WHEEL LOCKS ON ILLEGALLY PARKED VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 291 of the Session Laws of 1993 reads as rewritten:

"Section 1. The ~~Board of Aldermen of the City of Winston-Salem and the City Council of the City of Greensboro~~ council of a city may provide, by ordinance, for the use of wheel locks on illegally parked vehicles for which there are three or more outstanding, unpaid, and overdue parking tickets for a period of ninety days. The ordinance shall provide for notice or warning to be affixed to the vehicle, immobilization, towing, impoundment, appeal hearing, an immobilization fee not to exceed fifty dollars ($50.00), and charges for towing and storage. The ~~Cities of Winston-Salem and Greensboro~~ city shall not be responsible for any damage to an immobilized illegally parked vehicle resulting from unauthorized attempts to free or move that vehicle."

Sec. 2. Section 2 of Chapter 291 of the Session Laws of 1993 reads as rewritten:

"Sec. 2. This act applies to the Cities of ~~Winston-Salem~~ Durham, Raleigh, Winston-Salem, and Greensboro only."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1995.

H.B. 774 **CHAPTER 382**

AN ACT TO AMEND THE PROFESSIONAL CORPORATION ACT TO ALLOW COLLABORATIVE PRACTICES BETWEEN AND AMONG PHYSICIANS AND MID-LEVEL HEALTH CARE PROVIDERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-14 reads as rewritten:

"*§ 55B-14. Types of professional services.*

(a) A professional corporation shall render only one specific type professional service, and such services as may be ancillary thereto, and shall not engage in any other business or profession; provided, however, such corporation may own real and personal property necessary or appropriate for rendering the type of professional services it was organized to render and it may invest in real estate, mortgages, stocks, bonds, and any other type of ~~investments;~~ investments. ~~provided further, that~~

(b) Notwithstanding subsection (a) of this section, in the case of architectural, landscape architectural, engineering or land surveying and geological services, as defined in Chapters 83A, 89A, 89C, and 89E respectively, one corporation may be authorized to provide such of these services where such corporation, and at least one corporate officer who is a stockholder thereof, is duly licensed by the licensing board of each such ~~profession;~~ profession. ~~and provided further, that a professional corporation may be formed by a licensed psychologist and a physician practicing psychiatry to render psychotherapeutic and related services.~~

(c) A professional corporation may also be formed by and between or among:

(1) A licensed psychologist and a physician practicing psychiatry to render psychotherapeutic and related services;

(2) Any combination of a registered nurse, nurse practitioner, certified clinical specialist in psychiatric and mental health nursing, certified nurse midwife, and certified nurse anesthetist, to render nursing and related services that the respective stockholders are licensed, certified, or otherwise approved to provide;

(3) A physician and a physician assistant who is licensed, registered, or otherwise certified under Chapter 90 of the General Statutes to render medical and related services;

(4) A physician practicing psychiatry, or a licensed psychologist, or both, and a certified clinical specialist in psychiatric and mental health nursing, or a certified clinical social worker, or both, to render psychotherapeutic and related services that the respective stockholders are licensed, certified, or otherwise approved to provide;

(5) A physician and any combination of a nurse practitioner, certified clinical specialist in psychiatric and mental health nursing, or certified nurse midwife, registered or otherwise certified under Chapter 90 of the General Statutes, to render medical and related services that the respective stockholders are licensed, certified, or otherwise approved to provide; and

(6) A physician practicing anesthesiology and a certified nurse anesthetist to render anesthesia and related medical services that the respective stockholders are licensed, certified, or otherwise approved to provide."

Sec. 2. G.S. 55B-2(6) reads as rewritten:

"(6) The term 'professional service' means any type of personal or professional service of the public which requires as a condition precedent to the rendering of such service the obtaining of a license from a licensing board as herein defined, and pursuant to the following provisions of the General Statutes: Chapter 83, 'Architects'; Chapter 84, 'Attorneys-at-Law'; Chapter 93, 'Public Accountants'; and Article 1, 'Practice of Medicine,' Article 2, 'Dentistry,' Article 6, 'Optometry,' Article 7, 'Osteopathy,' Article 8, 'Chiropractic,' Article 9A, 'Nursing Practice Act,' with regard to registered nurses, Article 11, 'Veterinarians,' Article 12A, 'Podiatrists,' Article 18A, 'Practicing Psychologists,' and Article 18D, 'Occupational Therapy,' of Chapter 90; Chapter 89C, 'Engineering and Land Surveying'; Chapter 89A, 'Landscape Architects'; Chapter 90B, 'Social Worker Certification Act' with regard to Certified Clinical Social Workers as defined by G.S. 90B-3; Chapter 89E, 'Geologists'; and Chapter 89B, 'Foresters.'"

Sec. 3. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 6th day of July, 1995.

H.B. 970 **CHAPTER 383**

AN ACT TO PERMIT EMPLOYERS TO CONDUCT ON-SITE DRUG TESTING UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-232(c) reads as rewritten:

"(c) Approved laboratories: the examiner shall ~~use only approved laboratories for screening and confirmation of samples.~~ have the option of:

(1) Performing the screening test on-site for prospective employees, provided that samples which demonstrate a positive drug test result are sent to an approved laboratory for confirmation, or

(2) Having an approved laboratory perform both the screening and confirmation tests as provided in this section."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1995.

H.B. 997 **CHAPTER 384**

AN ACT TO ADD ACQUISITION OF LAND FOR LANDFILLS TO THE LIST OF PURPOSES FOR WHICH LOCAL GOVERNMENTS MAY ISSUE SPECIAL OBLIGATION BONDS OR OBTAIN FINANCING UNDER THE SOLID WASTE MANAGEMENT LOAN PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159I-8 reads as rewritten:

"§ *159I-8. Eligible purpose.*

(a) Loans may be made by the Agency to finance the cost of acquisition or construction of projects. Projects shall include solid waste management projects and capital expenditures to implement such projects, including, without limitation, the purchase of equipment or facilities, construction costs of an incinerator; land to be used for recycling ~~facilities;~~ facilities or landfills; leachate collection and treatment systems; liners for landfills; monitoring wells; recycling equipment and facilities; volume reduction equipment; and financing charges.

(b) Projects may not include:

(1) The operational and maintenance costs of solid waste management facilities or programs;

(2) General planning or feasibility studies; or

(3) The purchase of land, unless the land is to be used for a recycling ~~facility.~~ facility or a landfill."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1995.

H.B. 1018 **CHAPTER 385**

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS OPERATING LOCAL CONFINEMENT FACILITIES TO CHARGE FEES FOR NONEMERGENCY MEDICAL CARE PROVIDED TO PRISONERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-225(a) reads as rewritten:

"(a) Each unit that operates a local confinement facility shall develop a plan for providing medical care for prisoners in the facility. The plan

(1) Shall be designed to protect the health and welfare of the prisoners and to avoid the spread of contagious disease;

(2) Shall provide for medical supervision of prisoners and emergency medical care for prisoners to the extent necessary for their health and welfare;

(3) Shall provide for the detection, examination and treatment of prisoners who are infected with tuberculosis or venereal diseases.

The unit shall develop the plan in consultation with appropriate local officials and organizations, including the sheriff, the county physician, the local or district health director, and the local medical society. The plan must be approved by the local or district health director after consultation with the area mental health, developmental disabilities, and substance abuse authority, if it is adequate to protect the health and welfare of the prisoners. Upon a determination that the plan is adequate to protect the health and welfare of the prisoners, the plan must be adopted by the governing body.

As a part of its plan, each unit may establish fees of not more than ten dollars ($10.00) per incident for the provision of nonemergency medical care to prisoners. In establishing fees pursuant to this section, each unit shall establish a procedure for waiving fees for indigent prisoners."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1995.

S.B. 26 **CHAPTER 386**

AN ACT TO ENABLE LOCAL BOARDS OF EDUCATION TO EXPEL FROM SCHOOL THOSE STUDENTS WHOSE CONTINUED PRESENCE IN SCHOOL CONSTITUTES A CLEAR THREAT TO THE SAFETY OF OTHER STUDENTS OR EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-391(d) reads as rewritten:

"(d) ~~A~~ Notwithstanding G.S. 115C-378, a local board of education may, upon recommendation of the principal and superintendent, expel any student 14 years of age or older ~~who has been convicted of a felony and~~ whose behavior indicates that the student's continued presence in school constitutes a clear threat to the safety ~~and health~~ of other students or employees. The local board of education's decision to expel a student under this section shall be based on clear and convincing evidence. Prior to ordering the expulsion of a student pursuant to this subsection, the local board of education shall consider whether there is an alternative program offered by the local school administrative unit that may provide education services for the student who is subject to expulsion. At any time after the first July 1 that is at least six months after the board's decision to expel a student under this subsection, a student may request the local board of education to reconsider that decision. If the student demonstrates to the satisfaction of the local board of education that the student's presence in school no longer constitutes a threat to the safety of other students or employees, the board shall readmit the student to a school in that local school administrative unit on a date the board considers appropriate. Notwithstanding the provisions of G.S. 115C-112, a local board of education has no duty to continue to provide a child with special needs, expelled pursuant to this subsection, with any special education or related services during the period of expulsion."

Sec. 2. G.S. 115C-276 is amended by adding a new subsection to read:

"(r) To Maintain Student Discipline. -- The superintendent shall maintain student discipline in accordance with Article 27 of this Chapter and shall keep data on each student suspended or expelled. This data shall include the race, gender, and age of each student, the duration of suspension for each student, whether an alternative education was considered or provided for each student, and whether a student had multiple suspensions."

Sec. 3. The State Board of Education shall develop guidelines that define acts and conduct that are considered a clear threat to the safety of students and teachers. The State Board of Education shall report to the 1995 General Assembly and the Joint Legislative Education Oversight Committee no later than December 1, 1996, on the implementation of this act, including the numbers of students expelled under the act.

Sec. 4. This act becomes effective September 1, 1995, and applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 412 **CHAPTER 387**

AN ACT TO MODIFY THE LAW CONCERNING THE FEDERAL PREEMPTION OF STATE USURY LAWS AND TO RAISE THE MAXIMUM LATE PAYMENT CHARGE FOR REVOLVING CREDIT LOANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-2.3 reads as rewritten:

"*§ 24-2.3. State opt-out from federal preemption.*

(a) The provisions of section 501, ~~and the amendments made by section 521-524~~ of United States Public Law 96-221, as well as any modifications made to date, shall not apply to loans, mortgages, credit sales and advances made in this State.

(b) Effective July 1, 1995, sections 521-524 of United States Public Law 96-221, shall apply to loans, mortgages, credit sales, and advances made in this State on or after that date as if North Carolina had never opted out of sections 521-524 of United States Public Law 96-221."

Sec. 2. G.S. 24-11(d1) reads as rewritten:

"(d1) A lender may charge a party to a loan or extension of credit governed by this section a late payment charge not to exceed five dollars ($5.00) on accounts having an outstanding balance of less than one hundred dollars ($100.00) and ten dollars ($10.00) on accounts having an outstanding balance of one hundred dollars ($100.00) or more, for any payment past due for 30 days or ~~more.~~ more; provided, in no case shall the late charge exceed the outstanding principal balance. If a late payment charge has been once imposed with respect to a late payment, no late charge shall be imposed with respect to any future payment which would have been timely and sufficient but for the previous default."

Sec. 3. This act becomes effective July 1, 1995, and Section 2 applies to payments due and payable on or after that date.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 426 **CHAPTER 388**

AN ACT TO AMEND THE PUBLIC RECORDS LAW.

The General Assembly of North Carolina enacts:

Section 1. Existing G.S. 132-1 is redesignated as subsection (a), and a new subsection is added to read:

"(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain

copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, 'minimal cost' shall mean the actual cost of reproducing the public record or public information."

Sec. 2. G.S. 132-6 reads as rewritten:

"*§ 132-6. Inspection and examination of records.*

(a) Every ~~person having custody~~ custodian of public records shall permit ~~them to be~~ any record in the custodian's custody to be inspected and examined at reasonable times and under ~~his~~ reasonable supervision by any person, and ~~he shall~~ shall, as promptly as possible, furnish ~~certified~~ copies thereof ~~on~~ upon payment of any fees as may be prescribed by law. As used herein, 'custodian' does not mean an agency that holds the public records of other agencies solely for purposes of storage or safekeeping or solely to provide data processing.

(b) No person requesting to inspect and examine public records, or to obtain copies thereof, shall be required to disclose the purpose or motive for the request.

(c) No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information. If it is necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation on the following schedule:

State agencies after June 30, 1996;

Municipalities with populations of 10,000 or more, counties with populations of 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in those counties, after June 30, 1997;

Municipalities with populations of less than 10,000, counties with populations of less than 25,000, as determined by the 1990 U.S. Census, and public hospitals in those counties, after June 30, 1998;

Political subdivisions and their agencies that are not otherwise covered by this schedule, after June 30, 1998.

(d) Notwithstanding the ~~foregoing~~ provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects in the State may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities.

(e) The application of this Chapter is subject to the provisions of Article 1 of Chapter 121 of the General Statutes, the North Carolina Archives and History Act.

(f) Notwithstanding the provisions of subsection (a) of this section, the inspection or copying of any public record which, because of its age or condition could be damaged during inspection or copying, may be made subject to reasonable restrictions intended to preserve the particular record."

Sec. 3. Chapter 132 of the General Statutes is amended by adding two new sections to read:

"*§ 132-6.1. Electronic data-processing records.*

(a) After June 30, 1996, no public agency shall purchase, lease, create, or otherwise acquire any electronic data-processing system for the storage, manipulation, or retrieval of public records unless it first determines that the system will not impair or impede the agency's ability to permit the public inspection and examination, and to provide electronic copies of such records. Nothing in this subsection shall be construed to require the retention by the public agency of obsolete hardware or software.

(b) Every public agency shall create an index of computer databases compiled or created by a public agency on the following schedule:

State agencies by July 1, 1996;

Municipalities with populations of 10,000 or more, counties with populations of 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1997;

Municipalities with populations of less than 10,000, counties with populations of less than 25,000, as determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1998;

Political subdivisions and their agencies that are not otherwise covered by this schedule, after June 30, 1998.

The index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of the data fields; a description of the format or record layout; information as to the frequency with which the database is updated; a list of any data fields to which public access is restricted; a description of each form in which the database can be copied or reproduced using the agency's computer facilities; and a schedule of fees for the production of copies in each available form. Electronic databases compiled or created prior to the date by which the index must be created in accordance with this subsection may be indexed at the public agency's option. The form, content, language, and guidelines for the index and the databases to be indexed shall be developed by the Division of Archives and History in consultation with officials at other public agencies.

(c) Nothing in this section shall require a public agency to create a computer database that the public agency has not otherwise created or is not otherwise required to be created. Nothing in this section requires a public agency to disclose its software security, including passwords.

(d) The following definitions apply in this section:

(1) Computer database. -- A structured collection of data or documents residing in a database management program or spreadsheet software.

(2) Computer hardware. -- Any tangible machine or device utilized for the electronic storage, manipulation, or retrieval of data.

(3) Computer program. -- A series of instructions or statements that permit the storage, manipulation, and retrieval of data within an electronic data-processing system, together with any associated documentation. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software.

(4) Computer software. -- Any set or combination of computer programs. The term does not include the original data, or any

analysis, compilation, or manipulated form of the original data produced by the use of the program or software.

(5) Electronic data-processing system. -- Computer hardware, computer software, or computer programs or any combination thereof, regardless of kind or origin.

"§ 132-6.2. *Provisions for copies of public records; fees.*

(a) Persons requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. No request for copies of public records in a particular medium shall be denied on the grounds that the custodian has made or prefers to make the public records available in another medium. The public agency may assess different fees for different media as prescribed by law.

(b) Persons requesting copies of public records may request that the copies be certified or uncertified. The fees for certifying copies of public records shall be as provided by law. Except as otherwise provided by law, no public agency shall charge a fee for an uncertified copy of a public record that exceeds the actual cost to the public agency of making the copy. For purposes of this subsection, 'actual cost' is limited to direct, chargeable costs related to the reproduction of a public record as determined by generally accepted accounting principles and does not include costs that would have been incurred by the public agency if a request to reproduce a public record had not been made. Notwithstanding the provisions of this subsection, if the request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or if producing the record in the medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of information requested, then the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the actual cost incurred for such extensive use of information technology resources or the labor costs of the personnel providing the services, or for a greater use of information technology resources that is actually incurred by the agency or attributable to the agency. If anyone requesting public information from any public agency is charged a fee that the requester believes to be unfair or unreasonable, the requester may ask the Information Resource Management Commission to mediate the dispute.

(c) Persons requesting copies of computer databases may be required to make or submit such requests in writing. Custodians of public records shall respond to all such requests as promptly as possible. If the request is granted, the copies shall be provided as soon as reasonably possible. If the request is denied, the denial shall be accompanied by an explanation of the basis for the denial. If asked to do so, the person denying the request shall, as promptly as possible, reduce the explanation for the denial to writing.

(d) Nothing in this section shall be construed to require a public agency to respond to requests for copies of public records outside of its usual business hours.

(e) Nothing in this section shall be construed to require a public agency to respond to a request for a copy of a public record by creating or compiling a record that does not exist. If a public agency, as a service to

the requester, voluntarily elects to create or compile a record, it may negotiate a reasonable charge for the service with the requester. Nothing in this section shall be construed to require a public agency to put into electronic medium a record that is not kept in electronic medium."

Sec. 4. G.S. 132-9 reads as rewritten:

"*§ 132-9. Access to records.*

(a) Any person who is denied access to public records for purposes of ~~inspection, examination or copying~~ inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling ~~disclosure,~~ disclosure or copying, and the court shall have jurisdiction to issue such orders. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(b) In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132-6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project.

(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court may, in its discretion, allow the prevailing party to recover reasonable attorneys' fees if:

(1) The court finds that the agency acted without substantial justification in denying access to the public records; and

(2) The court finds that there are no special circumstances that would make the award of attorneys' fees unjust.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court may, in its discretion, assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs."

Sec. 5. Chapter 132 of the General Statutes is amended by adding a new section to read:

"*§ 132-10. Qualified exception for geographical information systems.*

Geographical information systems databases and data files developed and operated by counties and cities are public records within the meaning of this Chapter. The county or city shall provide public access to such systems by public access terminals or other output devices. Upon request, the county or city shall furnish copies, in documentary or electronic form, to anyone requesting them at reasonable cost. As a condition of furnishing an

electronic copy, whether on magnetic tape, magnetic disk, compact disk, or photo-optical device, a county or city may require that the person obtaining the copy agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. For purposes of this section, publication or broadcast by the news media shall not constitute a resale or use of the data for trade or commercial purposes and use of information without resale by a licensed professional in the course of practicing the professional's profession shall not constitute use for a commercial purpose."

Sec. 6. G.S. 6-19.2 is repealed.

Sec. 7. The Office of the State Controller shall study the implementation of this act and shall report to the General Assembly by March 1, 1997, on the implementation, effect, and costs arising from the implementation of this act.

Sec. 8. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 929

CHAPTER 389

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE NORTH CAROLINA RULES OF CIVIL PROCEDURE REGARDING SERVICE OF PROCESS AND DEPOSITIONS IN A FOREIGN COUNTRY AND THE DETERMINATION OF FOREIGN LAW TO BE APPLIED IN CERTAIN CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-75.4 reads as rewritten:

"*§ 1-75.4. Personal jurisdiction, grounds for generally.*

A court of this State having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to ~~Rule 4(j) or Rule 4(j1)~~ Rule 4(j), Rule 4(j1), or Rule 4(j3) of the Rules of Civil Procedure under any of the following circumstances:

(1) Local Presence or Status. -- In any action, whether the claim arises within or without this State, in which a claim is asserted against a party who when service of process is made upon such party:
   a. Is a natural person present within this State; or
   b. Is a natural person domiciled within this State; or
   c. Is a domestic corporation; or
   d. Is engaged in substantial activity within this State, whether such activity is wholly interstate, intrastate, or otherwise.

(2) Special Jurisdiction Statutes. -- In any action which may be brought under statutes of this State that specifically confer grounds for personal jurisdiction.

(3) Local Act or Omission. -- In any action claiming injury to person or property or for wrongful death within or without this State arising out of an act or omission within this State by the defendant.

(4) Local Injury; Foreign Act. -- In any action for wrongful death occurring within this State or in any action claiming injury to person or property within this State arising out of an act or omission outside this State by the defendant, provided in addition that at or about the time of the injury either:
   a. Solicitation or services activities were carried on within this State by or on behalf of the defendant; or
   b. Products, materials or thing processed, serviced or manufactured by the defendant were used or consumed, within this State in the ordinary course of trade.

(5) Local Services, Goods or Contracts. -- In any action which:
   a. Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this State or to pay for services to be performed in this State by the plaintiff; or
   b. Arises out of services actually performed for the plaintiff by the defendant within this State, or services actually performed for the defendant by the plaintiff within this State if such performance within this State was authorized or ratified by the defendant; or
   c. Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this State, or to ship from this State goods, documents of title, or other things of value; or
   d. Relates to goods, documents of title, or other things of value shipped from this State by the plaintiff to the defendant on his order or direction; or
   e. Relates to goods, documents of title, or other things of value actually received by the plaintiff in this State from the defendant through a carrier without regard to where delivery to the carrier occurred.

(6) Local Property. -- In any action which arises out of:
   a. A promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this State; or
   b. A claim to recover for any benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated within this State either at the time of the first use, ownership, control or possession or at the time the action is commenced; or
   c. A claim that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within this State at the time the defendant acquired possession or control over it.

(7) Deficiency Judgment on Local Foreclosure or Resale. -- In any action to recover a deficiency judgment upon an obligation secured by a mortgage, deed of trust, conditional sale, or other

security instrument executed by the defendant or his predecessor to whose obligation the defendant has succeeded and the deficiency is claimed either:

a. In an action in this State to foreclose such security instrument upon real property, tangible personal property, or an intangible represented by an indispensable instrument, situated in this State; or

b. Following sale of real or tangible personal property or an intangible represented by an indispensable instrument in this State under a power of sale contained in any security instrument.

(8) Director or Officer of a Domestic Corporation. -- In any action against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office as a director or officer.

(9) Taxes or Assessments. -- In any action for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this State after the date of ratification of this act.

(10) Insurance or Insurers. -- In any action which arises out of a contract of insurance as defined in G.S. 58-1-10 made anywhere between the plaintiff or some third party and the defendant and in addition either:

a. The plaintiff was a resident of this State when the event occurred out of which the claim arose; or

b. The event out of which the claim arose occurred within this State, regardless of where the plaintiff resided.

(11) Personal Representative. -- In any action against a personal representative to enforce a claim against the deceased person represented, whether or not the action was commenced during the lifetime of the deceased, where one or more of the grounds stated in subdivisions (2) to (10) of this section would have furnished a basis for jurisdiction over the deceased had he been living.

(12) Marital Relationship. -- In any action under Chapter 50 that arises out of the marital relationship within this State, notwithstanding subsequent departure from the State, if the other party to the marital relationship continues to reside in this State."

Sec. 2. G.S. 1A-1, Rule 4(j), is amended by adding a new subdivision to read:

"(10) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608."

Sec. 3. G.S. 1A-1, Rule 4 (j3), reads as rewritten:

"(j3) Service in a foreign country. -- ~~Where service is to be effected upon a party in a foreign country, in the alternative service of the summons and complaint may be made (i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of~~

~~general jurisdiction; or (ii) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (iii) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer or a managing or general agent; or (iv) by any form of mail, requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or (v) as directed by order of the court. Service under (iii) or (v) may be made by any person authorized by section (a) of this rule or who is designated by order of the court or by the foreign court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service. Proof of service may be made as prescribed in G.S. 1-75.10, by the order of the court, or by the law of the foreign country. Proof of service by mail shall include an affidavit or certificate of addressing and mailing by the clerk of court.~~ Unless otherwise provided by federal law, service upon a defendant, other than an infant or an incompetent person, may be effected in a place not within the United States:

(1) By any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) If there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

a. In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

b. As directed by the foreign authority in response to a letter rogatory or letter of request; or

c. Unless prohibited by the law of the foreign country, by

1. Delivery to the individual personally of a copy of the summons and the complaint and, upon a corporation, partnership, association or other such entity, by delivery to an officer or a managing or general agent;

2. Any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) By other means not prohibited by international agreement as may be directed by the court.

Service under subdivision (2)c.1. or (3) of this subsection may be made by any person authorized by subsection (a) of this Rule or who is designated by order of the court or by the foreign court.

On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service. Proof of service may be made as prescribed in G.S. 1-75.10, by the order of the court, or by the law of the foreign country.

Proof of service by mail shall include an affidavit or certificate of addressing and mailing by the clerk of court."

Sec. 4. G.S. 1A-1, Rule 28(b), reads as rewritten:

"(b) In foreign countries. -- ~~In a foreign country, depositions~~ Depositions may be taken ~~(i) on notice~~ in a foreign country:

(1) Pursuant to any applicable treaty or convention;

(2) Pursuant to a letter of request, whether or not captioned a letter rogatory;

(3) On notice before a person authorized to administer oaths in the place ~~in which~~ where the examination is held, either by the law thereof or by the law of the United ~~States,~~ States; or ~~(ii) before~~

(4) Before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take ~~testimony, or (iii) pursuant to a letter rogatory.~~ testimony. A commission or a letter ~~rogatory~~ of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter ~~rogatory~~ of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter ~~rogatory~~ of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter ~~rogatory~~ of request may be addressed 'To the Appropriate Authority in (here name the country).' When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter ~~rogatory~~ of request need not be excluded merely ~~for the reason that~~ because ~~it is not a verbatim transcript or that~~ the testimony was not taken under ~~oath~~ oath, or ~~for~~ any similar departure from the requirements for depositions taken within the United States under these rules."

Sec. 5. Chapter 1A of the General Statutes is amended by adding a new Rule to read:

"*Rule 44.1. Determination of foreign law.*

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or by other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Chapter 8 of the General Statutes and State law. The court's determination shall be treated as a ruling on a question of law."

Sec. 6. This act becomes effective October 1, 1995, and applies to civil actions filed on or after that date.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 943 **CHAPTER 390**

AN ACT TO ADDRESS MOTOR FUEL TAX EVASION AND TO IMPROVE THE ADMINISTRATION OF THE MOTOR FUEL TAXES BY CHANGING THE POINT OF TAXATION OF GASOLINE AND DIESEL FUEL, TO REPEAL THE MINIMUM HIGHWAY USE TAX,

AND TO STRENGTHEN THE ENFORCEMENT OF THE ROAD TAX PAID BY MOTOR CARRIERS.

The General Assembly of North Carolina enacts:

PART I.

MOTOR FUEL LAW CHANGES

Section 1. The heading to Subchapter V of Chapter 105 of the General Statutes reads as rewritten:

"SUBCHAPTER V. ~~GASOLINE TAX.~~ MOTOR FUEL TAXES."

Sec. 2. Articles 36 and 36A of Chapter 105 of the General Statutes are repealed.

Sec. 3. Subchapter V of Chapter 105 of the General Statutes is amended by adding the following Articles to read:

"ARTICLE 36C.

"Gasoline, Diesel, and Blends.

"Part 1. General Provisions.

"*§ 105-449.60. Definitions.*

The following definitions apply in this Article:

(1) Blended fuel. -- A mixture composed of gasoline or diesel fuel and another liquid, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

(2) Blender. -- A person who produces blended fuel outside the terminal transfer system.

(3) Bulk-end user. -- A person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle.

(4) Bulk plant. -- A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(5) Code. -- Defined in G.S. 105-228.90.

(6) Destination state. -- The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

(7) Diesel fuel. -- Any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle. The term does not include jet fuel sold to a buyer who is certified to purchase jet fuel under the Code.

(8) Distributor. -- A person who acquires motor fuel from a supplier or from another distributor for subsequent sale.

(9) Dyed diesel fuel. -- Diesel fuel that meets the dyeing and marking requirements of § 4082 of the Code.

(10) Elective supplier. -- A supplier that is required to be licensed in this State and that elects to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

(11) Export. -- To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor

fuel delivered out-of-state by or for the seller constitutes an export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

(12) Fuel alcohol. -- Methanol or fuel grade ethanol.

(13) Fuel alcohol provider. -- A person who does any of the following:

a. Produces fuel alcohol.

b. Imports fuel alcohol outside the terminal transfer system by means of a marine vessel, a transport truck, or a railroad tank car.

(14) Gasohol. -- A blended fuel composed of gasoline and fuel grade ethanol.

(15) Gasoline. -- Any of the following:

a. All products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method.

b. A petroleum product component of gasoline, such as naptha, reformate, or toluene.

c. Gasohol.

d. Fuel grade ethanol.

The term does not include aviation gasoline sold for use in an aircraft motor. 'Aviation gasoline' is gasoline that is designed for use in an aircraft motor and is not adapted for use in an ordinary highway vehicle.

(16) Gross gallons. -- The total amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.

(17) Highway. -- Defined in G.S. 20-4.01(13).

(18) Highway vehicle. -- A self-propelled vehicle that is designed for use on a highway.

(19) Import. -- To bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a highway vehicle. In applying this definition, motor fuel delivered into this State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.

(20) Motor fuel. -- Gasoline, diesel fuel, and blended fuel.

(21) Motor fuel rate. -- The rate of tax set in G.S. 105-449.80.

(22) Motor fuel transporter. -- A person who transports motor fuel outside the terminal transfer system by means of a transport truck, a railroad tank car, or a marine vessel.

(23) Net gallons. -- The amount of motor fuel measured in gallons when corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14 7/10 pounds per square inch.

(24) Permissive supplier. -- An out-of-state supplier that elects, but is not required, to have a supplier's license under this Article.

(25) Person. -- Defined in G.S. 105-228.90.

(26) Position holder. -- The person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

(27) Rack. -- A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a transport truck, a railroad tank car, or another means of transfer that is outside the terminal transfer system.

(28) Removal. -- A physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or another means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

(29) Retailer. -- A person who maintains storage facilities for motor fuel and who sells the fuel at retail or dispenses the fuel at a retail location.

(30) Secretary. -- Defined in G.S. 105-228.90.

(31) Supplier. -- Any of the following:

a. A position holder or a person who receives motor fuel pursuant to a two-party exchange.

b. A fuel alcohol provider.

(32) System transfer. -- Either of the following:

a. A transfer of motor fuel within the terminal transfer system.

b. A transfer, by transport truck or railroad tank car, of fuel grade ethanol.

(33) Tank wagon. -- A truck that is not a transport truck and has multiple compartments designed or used to carry motor fuel.

(34) Terminal. -- A motor fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or marine vessel, and from which motor fuel may be removed at a rack.

(35) Terminal operator. -- A person who owns, operates, or otherwise controls a terminal.

(36) Terminal transfer system. -- The motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. The term has the same meaning as 'bulk transfer/terminal system' under 26 C.F.R. § 48.4081-1.

(37) Transmix. -- Either of the following:

a. The buffer or interface between two different products in a pipeline shipment.

b. A mix of two different products within a refinery or terminal that results in an off-grade mixture.

(38) Transport truck. -- A semitrailer combination rig designed or used to transport loads of motor fuel over a highway.

(39) Trustee. -- A person who is licensed as a supplier, an elective supplier, or a permissive supplier and who receives tax payments from and on behalf of a licensed distributor.

(40) Two-party exchange. -- A transaction in which motor fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement whereby the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.

"*§ 105-449.61. Tax restrictions; administration.*

(a) No Local Tax. -- A county or city may not impose a tax on the sale, distribution, or use of motor fuel.

(b) No Double Tax. -- The tax imposed by this Chapter applies only once on the same motor fuel.

(c) Administration. -- Article 9 of this Chapter applies to this Article.

"Part 2. Licensing.

"*§ 105-449.65. List of persons who must have a license.*

(a) License. -- A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

(1) A refiner.
(2) A supplier.
(3) A terminal operator.
(4) An importer.
(5) An exporter, if the Secretary imposes this requirement by rule.
(6) A blender.
(7) A motor fuel transporter.
(8) A bulk-end user of undyed diesel fuel.
(9) A retailer of undyed diesel fuel.

(b) Multiple Activity. -- A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is not required to obtain a separate license for any other activity for which a license is required and is considered to have a license as a distributor. A person who is licensed as a distributor or a blender is not required to obtain a separate license as a motor fuel transporter if the distributor or blender does not transport motor fuel for others for hire.

"*§ 105-449.66. Types of importers; restrictions on who can get a license as an importer.*

(a) Types. -- An applicant for a license as an importer must indicate the type of importer license sought. The types of importers are as follows:

(1) Bonded importer. -- A bonded importer is a person, other than a supplier, who imports, by transport truck or another means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in another state in any of the following circumstances:

a. The state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that state's rate or the rate of the destination state.

b. The supplier of the fuel is not an elective supplier.
c. The supplier of the fuel is not a permissive supplier.

(2) Occasional importer. -- An occasional importer is a person who imports motor fuel by any means outside the terminal transfer system.

(3) Tank wagon importer. -- A tank wagon importer is a person who imports, only by means of a tank wagon, motor fuel that is removed from a terminal or a bulk plant located in another state.

(b) Restrictions. -- A person may not be licensed as more than one type of importer. A person who is a bulk-end user and is not also a distributor may not be licensed as a bonded importer. A person who is a bulk-end user and is not also a distributor may be licensed as an occasional importer with the restriction that the person acquire motor fuel for import only from an elective supplier or a permissive supplier or from a bulk plant.

"§ *105-449.67. List of persons who may obtain a license.*

A person who is engaged in business as any of the following may obtain a license issued by the Secretary for that business:

(1) A distributor.
(2) A permissive supplier.

"§ *105-449.68. Restrictions on who can get a license as a distributor.*

A bulk-end user of motor fuel may not be licensed as a distributor unless the user also acquires motor fuel from a supplier or from another distributor for subsequent sale. This restriction does not apply to a bulk-end user that was licensed as a distributor on January 1, 1996. If a distributor license held by a bulk-end user on January 1, 1996, is subsequently cancelled, the bulk-end user is subject to the restriction set in this section.

"§ *105-449.69. How to apply for a license.*

(a) General. -- To obtain a license, an applicant must file an application with the Secretary on a form provided by the Secretary. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary.

(b) Most Licenses. -- An applicant for a license as a refiner, a supplier, a terminal operator, an importer, a blender, a bulk-end user of undyed diesel fuel, a retailer of undyed diesel fuel, or a distributor must meet the following requirements:

(1) If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State.

(2) If the applicant is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State.

(3) If the applicant is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State.

(4) If the applicant is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address.

(c) Federal Certificate. -- An applicant for a license as a refiner, a supplier, a terminal operator, a blender, or a permissive supplier must have

a federal Certificate of Registry that is issued under § 4101 of the Code and authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant that is required to have a federal Certificate of Registry must include the registration number of the certificate on the application for a license under this section.

An applicant for a license as an importer or a distributor that has a federal Certificate of Registry issued under § 4101 of the Code must include the registration number of the certificate on the application for a license under this section.

(d) Import and Export Activity. -- An applicant for a license as an importer must list on the application each state from which the applicant intends to import motor fuel and, if required by a state listed, must be licensed or registered for motor fuel tax purposes in that state. An applicant for a license as a distributor must list on the application each state to which the applicant intends to export motor fuel received in this State by means of a transfer that is outside the terminal transfer system and, if required by a state listed, must be licensed or registered for motor fuel tax purposes in that state.

"*§ 105-449.70. Supplier election to collect tax on out-of-state removals.*

(a) Election. -- An applicant for a license as a supplier may elect on the application to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state. The Secretary must provide for this election on the application form. A supplier that makes the election allowed by this section is an elective supplier.

A supplier that does not make the election on the application for a supplier's license may make the election later by completing an election form provided by the Secretary. A supplier that does not make the election may not act as an elective supplier for motor fuel that is removed at a terminal in another state and has this State as its destination state.

(b) Effect. -- A supplier that makes the election allowed by this section agrees to all of the following with respect to motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state:

(1) To collect the excise tax due this State on the fuel and to waive any defense that the State lacks jurisdiction to require the supplier to collect the excise tax due this State under this Article on the fuel.

(2) To report and pay the tax due on the fuel in the same manner as if the removal had occurred at a terminal located in this State.

(3) To keep records of the removal of the fuel and submit to audits concerning the fuel as if the removal had occurred at a terminal located in this State.

(c) Limited Jurisdiction. -- A supplier that makes the election allowed by this section acknowledges that the State imposes the requirements listed in subsection (b) of this section on the supplier under its general police power set out in Article 3 of Chapter 119 of the General Statutes to regulate the quality of motor fuel and thereby promote public health and safety. A supplier that makes the election allowed by this section submits to the jurisdiction of the State only for the administration of this Article.

"§ 105-449.71. *Permissive supplier election to collect tax on out-of-state removals.*

(a) Election. -- An out-of-state supplier that is not required to have a license under this Part may elect to have a license and thereby become a permissive supplier. An out-of-state supplier that does not make this election may not act as a permissive supplier for motor fuel that is removed at a terminal in another state and has this State as its destination state.

(b) Effect. -- By obtaining a license as a permissive supplier, the permissive supplier agrees to be subject to the same requirements as a supplier and to all of the following with respect to motor fuel that is removed by the permissive supplier at a terminal located in another state and has this State as its destination state:

(1) To collect the excise tax due this State on the fuel and to waive any defense that the State lacks jurisdiction to require the supplier to collect the excise tax due this State under this Article on the fuel.

(2) To report and pay the tax due on the fuel in the same manner as if the removal had occurred at a terminal located in this State.

(3) To keep records of the removal of the fuel and submit to audits concerning the fuel as if the removal had occurred at a terminal located in this State.

(c) Limited Jurisdiction. -- A supplier that makes the election allowed by this section acknowledges that the State imposes the requirements listed in subsection (b) of this section on the supplier under its general police power set out in Article 3 of Chapter 119 of the General Statutes to regulate the quality of motor fuel and thereby promote public health and safety. A supplier that makes the election allowed by this section submits to the jurisdiction of the State only for the administration of this Article.

"§ 105-449.72. *Bond or letter of credit required as a condition of obtaining and keeping certain licenses.*

(a) Initial Bond. -- An applicant for a license as a refiner, a terminal operator, a supplier, an importer, a permissive supplier, or a distributor must file with the Secretary a bond or an irrevocable letter of credit. The amount of the bond or irrevocable letter of credit is determined as follows:

(1) For an applicant for a license as any of the following, the amount is two million dollars ($2,000,000):

a. A refiner.

b. A terminal operator.

c. A supplier that is a position holder or a person that receives motor fuel pursuant to a two-party exchange.

d. A bonded importer.

e. A permissive supplier.

(2) For an applicant for a license as any of the following, the amount is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. The amount may not be less than two thousand dollars ($2,000) and may not be more than two hundred fifty thousand dollars ($250,000):

a. A supplier that is a fuel alcohol provider but is not a position holder or a person that receives motor fuel pursuant to a two-party exchange.

b. An occasional importer.
c. A tank wagon importer.
d. A distributor.

A bond filed under this section must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. An applicant for a license as a distributor and as a bonded importer must file only the bond required of a bonded importer. An applicant for a license as a distributor and either an occasional importer or a tank wagon importer may file one bond that covers the combined liabilities of the applicant under both activities.

(b) Adjustment to Bond. -- When notified to do so by the Secretary, a person that has filed a bond or an irrevocable letter of credit and that holds a license listed in subdivision (a)(2) of this section must file an additional bond or irrevocable letter of credit in the amount requested by the Secretary. The person must file the additional bond or irrevocable letter of credit within 30 days after receiving the notice from the Secretary. The amount of the initial bond or irrevocable letter of credit and any additional bond or irrevocable letter of credit filed by the license holder, however, may not exceed the limits set in subdivision (a)(2) of this section.

"*§ 105-449.73. Reasons why the Secretary can deny an application for a license.*

The Secretary may refuse to issue a license to an individual applicant that has done any of the following and may refuse to issue a license to an applicant that is a business entity if any principal in the business has done any of the following:

(1) Had a license or registration issued under this Article or former Article 36 or 36A of this Chapter cancelled by the Secretary for cause.
(2) Had a federal Certificate of Registry issued under § 4101 of the Code, or a similar federal authorization, revoked.
(3) Been convicted of fraud or misrepresentation.
(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if issued a license.

"*§ 105-449.74. Issuance of license.*

Upon approval of an application, the Secretary must issue a license to the applicant as well as a duplicate copy of the license for each place of business of the applicant. A supplier's license must indicate the category of the supplier. A license holder must display a license issued under this Part in a conspicuous place at each place of business of the license holder. A license is not transferable and remains in effect until surrendered or cancelled.

"*§ 105-449.75. License holder must notify the Secretary of discontinuance of business.*

A license holder that stops engaging in this State in the business for which the license was issued must give the Secretary written notice of the change and must surrender the license to the Secretary. The notice must give the date the change takes effect and, if the license holder has transferred the business to another by sale or otherwise, the date of the transfer and the name and address of the person to whom the business is transferred.

If the license holder is a supplier, all taxes for which the supplier is liable under this Article but are not yet due become due on the date of the change. If the supplier has transferred the business to another and does not give the notice required by this section, the person to whom the supplier has transferred the business is liable for the amount of any tax the supplier owed the State on the date the business was transferred. The liability of the person to whom the business is transferred is limited to the value of the property acquired from the supplier.

"§ *105-449.76. Reasons why the Secretary can cancel a license.*

The Secretary may cancel a license issued under this Article upon the written request of the license holder. The Secretary may summarily cancel the license of a license holder when the Secretary finds that the license holder is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may cancel the license of a license holder that commits one or more of the acts listed in G.S. 105-449.120 after holding a hearing on whether the license should be cancelled.

The Secretary must send a person whose license is summarily cancelled a notice of the cancellation and must give the person an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary must give a person whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a notice of hearing must be sent by registered mail to the last known address of the license holder.

When the Secretary cancels a license and the license holder has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions concerning a bond or an irrevocable letter of credit filed by the license holder:

(1) Return an irrevocable letter of credit to the license holder.

(2) Return a bond to the license holder or notify the person liable on the bond and the license holder that the person is released from liability on the bond.

"§ *105-449.77. Records and lists of license applicants and license holders.*

(a) Records. -- The Secretary must keep a record of the following:

(1) Applicants for a license under this Article.

(2) Persons to whom a license has been issued under this Article.

(3) Persons that hold a current license issued under this Article, by license category.

(b) Distributor List. -- The Secretary must give a list of licensed distributors to each licensed supplier that asks for a copy of the list. The list must state the name and business address of each distributor on the list. The Secretary must send a monthly update of the list to each supplier that requested a copy of the list.

(c) Supplier List. -- The Secretary must give a list of licensed suppliers to each distributor that asks for a copy of the list. The list must state the name and business address of each supplier on the list and must indicate whether the supplier is an elective supplier or a permissive supplier. The Secretary must send an annual update of the list to each distributor that requested a copy of the list.

"Part 3. Tax and Liability.

"§ 105-449.80. Tax rate.

(a) Rate. -- The motor fuel excise tax rate is a flat rate of seventeen and one-half cents (17 1/2¢) a gallon plus a variable wholesale component. The variable wholesale component is either three and one-half cents (3 1/2¢) a gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater.

The two base periods are six-month periods; one ends on September 30 and one ends on March 31. The Secretary must set the tax rate twice a year based on the wholesale price for each base period. A tax rate set by the Secretary using information for the base period that ends on September 30 applies to the six-month period that begins the following January 1. A tax rate set by the Secretary using information for the base period that ends on March 31 applies to the six-month period that begins the following July 1.

(b) Wholesale Price. -- The Secretary must determine the average wholesale price of motor fuel for each base period. To do this, the Secretary must use information on refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel for resale, published by the United States Department of Energy in the 'Monthly Energy Review', or equivalent data.

The Secretary must compute the average sales price of finished motor gasoline for the base period, compute the average sales price for No. 2 diesel fuel for the base period, and then compute a weighted average of the results of the first two computations based on the proportion of tax collected on each under this Article for the base period. The Secretary must then convert the weighted average price to a cents-per-gallon rate and round the rate to the nearest one-tenth of a cent (1/10¢). If the converted cents-per-gallon rate is exactly between two-tenths of a cent (2/10¢), the Secretary must round the rate up to the higher of the two.

(c) Notification. -- The Secretary must notify affected taxpayers of the tax rate to be in effect for each six-month period beginning January 1 and July 1.

"§ 105-449.81. Excise tax on motor fuel.

An excise tax at the motor fuel rate is imposed on motor fuel that is:

(1) Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax imposed by § 4081 of the Code.

(2) Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by § 4081 of the Code.

(3) Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in this State and would have been subject to the federal excise tax imposed by § 4081 of the Code if it had been removed at a terminal or bulk plant rack in this State instead of imported.

(4) Blended fuel made in this State or imported to this State.

"§ 105-449.82. Liability for tax on removals from a refinery or terminal.

(a) Refinery Removal. -- The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed from a refinery in this State is payable by the refiner.

(b) Terminal System Removal. -- The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed by a system transfer from a terminal in this State is payable by the position holder for the fuel. If the position holder is not the terminal operator, the terminal operator is jointly and severally liable for the tax.

(c) Terminal Rack Removal. -- The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed at a terminal rack in this State is payable by the person that first receives the fuel upon its removal from the terminal. If the motor fuel is removed by an unlicensed distributor, the supplier of the fuel is jointly and severally liable for the tax due on the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person removing the fuel are jointly and severally liable for the tax due on the fuel.

"§ *105-449.83. Liability for tax on imports.*

(a) By System Transfer. -- The excise tax imposed by G.S. 105-449.81(2) on motor fuel imported by a system transfer to a refinery is payable by the refiner. The excise tax imposed by that subdivision on motor fuel imported by a system transfer to a terminal is payable by the person importing the fuel and by the terminal operator, both of which are jointly and severally liable for payment of the tax due on the fuel.

(b) From Out-of-State Terminal. -- The excise tax imposed by G.S. 105-449.81(3) on motor fuel that is removed from a terminal rack located in another state and has this State as its destination state is payable by the importer of the fuel as follows:

(1) If the importer of the fuel is a licensed supplier in this State and the fuel is removed for the supplier's own account for use in this State, the tax is payable by the supplier.

(2) If the supplier of the fuel is licensed in this State as an elective supplier or a permissive supplier, the tax is payable to the supplier as trustee.

(3) If no other subdivision of this subsection applies, the tax is payable by the importer when filing a return with the Secretary.

(c) From Out-of-State Bulk Plant. -- The excise tax imposed by G.S. 105-449.81(3) on motor fuel that is removed from a bulk plant located in another state is payable by the person that imports the fuel.

"§ *105-449.84. Liability for tax on blended fuel.*

(a) On Blender. -- The excise tax imposed by G.S. 105-449.81(4) on blended fuel made in this State is payable by the blender. The number of gallons of blended fuel on which the tax is payable is the difference between the number of gallons of blended fuel made and the number of gallons of previously taxed motor fuel used to make the blended fuel.

(b) On Importer. -- The excise tax imposed by G.S. 105-449.81(4) on blended fuel imported to this State is payable by the importer.

(c) Blends Made at Terminal. -- The following blended fuel is considered to have been made by the supplier of gasoline or undyed diesel fuel used in the blend:

(1) An in-line-blend made by combining a liquid with gasoline or undyed diesel fuel as the fuel is delivered at a terminal rack into

the motor fuel storage compartment of a transport truck or a tank wagon.

(2) A kerosene splash-blend made when kerosene is delivered at a terminal into a motor fuel storage compartment of a transport truck or a tank wagon and undyed diesel fuel is also delivered at that terminal into the same storage compartment, if the buyer of the kerosene notified the supplier before or at the time of delivery that the kerosene would be used to make a splash-blend.

"*§ 105-449.85. Compensating tax on and liability for unaccounted for motor fuel losses at a terminal.*

(a) Tax. -- An excise tax at the motor fuel rate is imposed annually on unaccounted for motor fuel losses at a terminal that exceed one-half of one percent (0.5%) of the number of net gallons removed from the terminal during the year by a system transfer or at a terminal rack. To determine if this tax applies, the terminal operator of the terminal must determine the difference between the following:

(1) The amount of motor fuel in inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the terminal during the year.

(2) The amount of motor fuel in inventory at the terminal at the end of the year plus the amount of motor fuel removed from the terminal during the year.

(b) Liability. -- The terminal operator whose motor fuel is unaccounted for is liable for the tax imposed by this section. Motor fuel received by a terminal operator and not shown on a report filed by the terminal operator with the Secretary as having been removed from the terminal is presumed to be unaccounted for. A terminal operator may establish that motor fuel received at a terminal but not shown on a report as having been removed from the terminal was lost or part of a transmix and is therefore not unaccounted for.

"*§ 105-449.86. Tax on and liability for dyed diesel fuel used to operate certain highway vehicles.*

(a) Tax. -- An excise tax at the motor fuel rate is imposed on dyed diesel fuel acquired to operate any of the following:

(1) A highway vehicle that is owned by or leased to a unit of local government and is allowed by § 4082 of the Code to use dyed diesel fuel.

(2) Either a local bus or an intercity bus that is allowed by § 4082(b)(3) of the Code to use dyed diesel fuel.

(3) A highway vehicle that is owned by or leased to an educational organization that is not a public school and is allowed by § 4082(b)(1) or (b)(3) of the Code to use dyed diesel fuel.

(4) A highway vehicle that is owned by or leased to the American Red Cross and is allowed by § 4082 of the Code to use dyed diesel fuel.

(b) Liability. -- If the distributor of dyed diesel fuel that is taxable under this section is not liable for the tax imposed by this section, the person that acquires the fuel is liable for the tax. The distributor of dyed diesel fuel that

is taxable under this section is liable for the tax imposed by this section in the following circumstances:

(1) When the person acquiring the dyed diesel fuel has storage facilities for the fuel and is therefore a bulk-end user of the fuel.

(2) When the person acquired the dyed diesel fuel from a retail outlet of the distributor by using an access card or code indicating that the person's use of the fuel is taxable under this section.

"§ *105-449.87. Backup tax and liability for the tax.*

(a) Tax. -- An excise tax at the motor fuel rate is imposed on the following:

(1) Dyed diesel fuel that is used to operate a highway vehicle for a use that is not a nontaxable use under § 4082(b) of the Code.

(2) Motor fuel that was allowed an exemption from the motor fuel tax and was then used for a taxable purpose.

(3) Motor fuel that is used to operate a highway vehicle after an application for a refund of tax paid on the motor fuel is made or allowed under G.S. 105-449.107(a) on the basis that the motor fuel was used for an off-highway purpose.

(4) Motor fuel imported by a tank wagon importer.

(b) Liability. -- The operator of a highway vehicle that uses motor fuel that is taxable under this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the end seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the end seller is jointly and severally liable for the tax.

(c) Imputed Knowledge. -- An end seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section unless the end seller delivered the fuel into a storage facility that meets one of the following requirements:

(1) It contains fuel used only in heating, drying crops, or a manufacturing process and is installed in a manner that makes use of the fuel for any other purpose improbable.

(2) It is marked as follows with the phrase 'Dyed Diesel', 'For Nonhighway Use', or a similar phrase that clearly indicates the fuel is not to be used to operate a highway vehicle:

a. The storage tank of the storage facility is marked if the storage tank is visible.

b. The fillcap or spill containment box of the storage facility is marked.

c. The dispensing device that serves the storage facility is marked.

"§ *105-449.88. Exemptions from the excise tax.*

The excise tax on motor fuel does not apply to the following:

(1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state that is printed on the shipping document for the motor fuel.

(2) Motor fuel sold to the federal government.
(3) Motor fuel sold to the State for its use.
(4) Motor fuel sold to a local board of education for use in the public school system.

"Part 4. Payment and Reporting.

"*§ 105-449.90. When tax return and payment are due.*

(a) Filing Periods. -- The excise tax imposed by this Article is payable when a return is due. A return is due annually, quarterly, or monthly, as specified in this section. A return must be filed with the Secretary and be in the form required by the Secretary.

An annual return is due within 45 days after the end of each calendar year. An annual return covers tax liabilities that accrue in the calendar year preceding the date the return is due.

A quarterly return is due by the last day of the month that follows the end of a calendar quarter. A quarterly return covers tax liabilities that accrue in the calendar quarter preceding the date the return is due.

A monthly return of a person other than an occasional importer is due within 22 days after the end of each month. A monthly return of an occasional importer is due by the 1st of each month. A monthly return covers tax liabilities that accrue in the calendar month preceding the date the return is due.

(b) Annual Filers. -- A terminal operator must file an annual return for the compensating tax imposed by G.S. 105-449.85.

(c) Quarterly Filers. -- A licensed distributor must file a quarterly return under G.S. 105-449.94 to reconcile exempt sales.

(d) Monthly Filers on 22nd. -- The following persons must file a monthly return by the 22nd of each month:

(1) A refiner.
(2) A supplier.
(3) A bonded importer.
(4) A blender.
(5) A tank wagon importer.
(6) A person that is liable under G.S. 105-449.86 for the tax on dyed diesel fuel used to operate certain highway vehicles.
(7) A person that is liable under G.S. 105-449.87 for the backup tax on motor fuel.

(e) Monthly Filers on 1st. -- An occasional importer must file a monthly return by the 1st of each month. An occasional importer is not required to file a return, however, if all the motor fuel imported by the importer in a reporting period was removed at a terminal located in another state and the supplier of the fuel is an elective supplier or a permissive supplier.

"*§ 105-449.91. Remittance of tax by distributor.*

A distributor that is liable for the tax imposed on motor fuel removed at a terminal rack must remit the tax to the supplier of the fuel. A licensed distributor has the right to defer the remittance of tax to the supplier, as trustee, until the date the trustee must pay the tax to the State. Payment of tax by an unlicensed distributor to a supplier is governed by the terms of the contract between the unlicensed distributor and the supplier. G.S. 105-449.76 governs the cancellation of a distributor's license.

"§ 105-449.92. Notice to suppliers of cancellation or reissuance of a distributor's license; effect of notice.

(a) Notice to Suppliers. -- If the Secretary cancels a distributor's license, the Secretary must notify all suppliers of the cancellation. If the Secretary issues a license to a distributor whose license was cancelled, the Secretary must notify all suppliers of the issuance.

(b) Effect of Notice. -- A supplier that sells motor fuel to a distributor after receiving notice from the Secretary that the Secretary has cancelled the distributor's license is jointly and severally liable with the distributor for any tax due on motor fuel the supplier sells to the distributor after receiving the notice. This joint and several liability does not apply to excise tax due on motor fuel sold to a previously unlicensed distributor after the supplier receives notice from the Secretary that the Secretary has issued another license to the distributor.

"§ 105-449.93. Exempt sale deduction and percentage discount for licensed distributors.

(a) Deduction. -- A licensed distributor may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel the distributor received from the supplier and resold to a governmental unit whose purchases of motor fuel are exempt from the tax under G.S. 105-449.88 if, when removing the fuel, the distributor used an access card or code specified by the supplier to notify the supplier of the distributor's intent to resell the fuel in an exempt sale.

(b) Percentage Discount. -- A licensed distributor that pays the excise tax due a supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of one percent (1%) of the amount of tax payable. The discount covers the expense of furnishing a bond and losses due to shrinkage or evaporation. A supplier may not directly or indirectly deny this discount to a licensed distributor that pays the excise tax due the supplier by the date the supplier must pay the tax to the State.

"§ 105-449.94. Quarterly reconciling return for exempt sales by licensed distributor.

(a) Return. -- A licensed distributor that deducts exempt sales under G.S. 105-449.93(a) when paying tax to a supplier must file a quarterly reconciling return for the exempt sales. The return must list the following information:

(1) The number of gallons for which a deduction was taken during the quarter, by supplier.

(2) The number of gallons sold in exempt sales during the quarter, by type of sale, and the purchasers of the fuel in the exempt sales.

(b) Payment. -- If the number of gallons for which a licensed distributor takes a deduction during a quarter exceeds the number of exempt gallons sold, the licensed distributor must pay tax on the difference at the motor fuel rate. The licensed distributor is not allowed a percentage discount when paying tax under this subsection.

(c) Refund. -- If the number of gallons for which a licensed distributor takes a deduction during a quarter is less than the number of exempt gallons sold, the Secretary must refund the licensed distributor for the amount of tax paid on the difference. The Secretary must reduce the amount of the refund

by the amount of the percentage discount the distributor received on the fuel.

(d) Exception. -- If the number of gallons for which a licensed distributor takes a deduction during a quarter equals the number of exempt gallons sold, the licensed distributor is not required to file a return under this section for that quarter. The Secretary may waive the requirement of filing a return under this section in other specified circumstances.

"§ *105-449.95. Quarterly hold harmless for licensed distributors.*

(a) Calculation. -- At the end of each calendar quarter, the Secretary must review the amount of discounts each licensed distributor received under G.S. 105-449.93(b). The Secretary must determine if the amount of discounts the distributor received under that subsection in each month of the quarter is less than the amount the distributor would have received if the distributor had been allowed a discount on taxable gasoline purchased by the distributor from a supplier during each month of the quarter under the following schedule:

Amount of Gasoline Purchased Each Month	Percentage Discount
First 150,000 gallons	2%
Next 100,000 gallons	1 1/2%
Amount over 250,000 gallons	1%.

(b) Refund. -- If the amount the distributor received under G.S. 105-449.93(b) for a month in the quarter is less than the amount the distributor would have received on the distributor's taxable gasoline purchases under the monthly schedule in subsection (a) of this section, the Secretary must send the distributor a refund check for the difference. In determining the amount of discounts a distributor received under G.S. 105-449.93(b) for gasoline purchased in a month, a distributor is considered to have received the amount of any discounts the distributor could have received under that subsection but did not receive because the distributor failed to pay the tax due to the supplier by the date the supplier had to pay the tax to the State.

"§ *105-449.96. Information required on return filed by supplier.*

A return of a supplier must list all of the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel received during the month by the supplier by a system transfer, by type of fuel, and by terminal.

(2) The number of gallons of motor fuel imported during the month by the supplier by a means of transfer outside the terminal transfer system.

(3) The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, by type of fuel, by receiving distributor, and by terminal.

(4) The number of gallons of motor fuel removed during the month for export, by distributor and by terminal, and, for each removal, the destination state of the fuel.

(5) The number of gallons of motor fuel removed during the month, by distributor and by terminal, at a terminal located in another state for destination to this State, as indicated on the shipping document for the fuel.

(6) The number of gallons of motor fuel the supplier sold during the month, by distributor and by terminal, to either of the following:
a. A governmental unit whose use of fuel is exempt from the tax.
b. A distributor that resold the motor fuel to a governmental unit whose use of fuel is exempt from the tax, as reported by the distributor.

(7) The amount of discounts allowed under G.S. 105-449.93(b) on motor fuel sold during the month to licensed distributors, sorted by distributor.

"*§ 105-449.97. Deductions and discounts allowed a supplier when filing a return.*

(a) Taxes Not Remitted. -- When a supplier files a return, the supplier may deduct from the amount of tax payable with the return the amount of tax a licensed distributor owes the supplier but failed to remit to the supplier. A supplier is not liable for tax a licensed distributor owes the supplier but fails to pay. If a licensed distributor pays tax owed to a supplier after the supplier deducts the amount on a return, the supplier must promptly remit the distributor's payment to the Secretary.

(b) Administrative Discount. -- A supplier that files a timely return may deduct from the amount of tax payable with the return an administrative discount of one-tenth of one percent (0.1%) of the amount of tax payable as the trustee, not to exceed eight thousand dollars ($8,000) a month. The discount covers expenses incurred in collecting taxes on motor fuel from distributors.

(c) Percentage Discount. -- A supplier that sells motor fuel directly to the bulk-end user, the retailer, or user of the fuel can take the same percentage discount on the fuel that a licensed distributor can take under G.S. 105-449.93(b) when making deferred payments of tax to the supplier.

"*§ 105-449.98. Duties of supplier concerning payments by distributors.*

(a) As Fiduciary. -- A supplier has a fiduciary duty to remit to the Secretary the amount of tax paid to the supplier by a licensed distributor. A supplier is liable for taxes paid to the supplier by a licensed distributor.

(b) Notification to Distributor. -- A supplier must notify a licensed distributor that received motor fuel from the supplier during a reporting period of the number of taxable gallons received. The supplier must give this notice after the end of each reporting period and before the licensed distributor must remit to the supplier the amount of tax due on the fuel.

(c) Notification to Department. -- A supplier of motor fuel at a terminal must notify the Department within 10 days after a return is due of any licensed distributors that did not pay the tax due the supplier when the supplier filed the return. The notification must be transmitted to the Department in the form required by the Department.

(d) Payment Application. -- A supplier that receives a payment of excise tax from a distributor may not apply the payment to debts for motor fuel purchased from the supplier.

"*§ 105-449.99. Returns and discounts of importers.*

(a) Return. -- A monthly return of a bonded importer, an occasional importer, or a tank wagon importer must contain the following information concerning motor fuel imported during the period covered by the return:

(1) The number of gallons of imported motor fuel acquired from a supplier that collected the excise tax due this State on the fuel.

(2) The number of gallons of imported motor fuel acquired from a supplier that did not collect the excise tax due this State on the fuel, listed by source state, supplier, and terminal.

(3) The import authorization number of each import that is reported under subdivision (2) of this subsection and was removed from a terminal.

(4) For an occasional importer or a tank wagon importer, the number of gallons of imported motor fuel acquired from a bulk plant, listed by bulk plant.

(b) Discounts. -- An importer may not deduct an administrative discount from the amount remitted with a return. An importer that imports motor fuel received from an elective supplier or a permissive supplier may deduct the percentage discount allowed by G.S. 105-449.93(b) when remitting tax to the supplier, as trustee, for payment to the State. An importer that imports motor fuel received from a supplier that is not an elective supplier or a permissive supplier may not deduct the percentage discount allowed by G.S. 105-449.93(b) when filing a return for the tax due.

"*§ 105-449.100. Report by terminal operator.*

A terminal operator must make a monthly report to the Secretary of motor fuel received or removed from the terminal during the month. The report is due by the 25th day of the month following the month covered by the report and must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel.

(2) The number of gallons removed from the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel.

(3) The number of gallons of motor fuel gained or lost at the terminal during the month.

"*§ 105-449.101. Reports by those that transport motor fuel.*

(a) Requirement. -- A person that transports, by pipeline, marine vessel, railroad tank car, or transport truck, motor fuel that is being imported into this State or exported from this State must make a monthly report to the Secretary of motor fuel received or delivered for import or export by the transporter during the month. This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.

(b) Content. -- The report required by this section is due by the 25th day of the month following the month covered by the report and must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the

amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.

(2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

"*§ 105-449.102. Report of exports from a bulk plant.*

A distributor that exports motor fuel from a bulk plant located in this State must make a monthly report to the Secretary of the exports. The report is due by the 25th day of the month following the month covered by the report. The report must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel exported during the month.

(2) The destination state of the motor fuel exported during the month.

"Part 5. Refunds.

"*§ 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, and fuel unsalable for highway use.*

(a) Exempt Fuel. -- A distributor may obtain a refund of tax paid by the distributor on motor fuel sold to a governmental unit whose use of motor fuel is exempt from the motor fuel excise tax. A governmental unit whose use of motor fuel is exempt from the motor fuel excise tax may obtain a refund of tax paid by it on motor fuel. A person may obtain a refund of tax paid by the person on exported fuel, including fuel whose shipping document shows this State as the destination state but was diverted to another state in accordance with the diversion procedures established by the Secretary.

(b) Lost Fuel. -- A supplier, an importer, or a distributor that loses tax-paid motor fuel due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an act of war, or an accident may obtain a refund for the tax paid on the fuel.

(c) Accidental Mixes. -- A person that accidentally combines any of the following may obtain a refund for the amount of tax paid on the fuel:

(1) Dyed diesel fuel with tax-paid motor fuel.

(2) Gasoline with diesel fuel.

(3) Undyed diesel fuel with dyed kerosene.

(d) Refund Amount. -- The amount of a refund allowed under this section is the amount of tax paid.

"*§ 105-449.106. Quarterly refunds for certain local governmental entities, nonprofit organizations, and taxicabs.*

(a) Government and Nonprofits. -- A local governmental entity or a nonprofit organization listed below that purchases and uses motor fuel may receive a quarterly refund, for the tax paid during the preceding quarter, at a rate equal to the amount of the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. Any of the following entities may receive a refund under this section:

(1) A county or a municipal corporation.

(2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.
(3) A volunteer fire department.
(4) A volunteer rescue squad.
(5) A sheltered workshop recognized by the Department of Human Resources.

An application for a refund allowed under this section must be made in accordance with this Part and must be signed by the chief executive officer of the entity. The chief executive officer of a nonprofit organization is the president of the organization or another officer of the organization designated in the charter or bylaws of the organization.

(b) Taxi. -- A person who purchases and uses motor fuel in a taxicab, as defined in G.S. 20-87(1), while the taxicab is engaged in transporting passengers for hire, or in a bus operated as part of a city transit system that is exempt from regulation by the North Carolina Utilities Commission under G.S. 62-260(a)(8), may receive a quarterly refund, for the tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. An application for a refund must be made in accordance with this Part.

"*§ 105-449.107. Annual refunds for off-highway use and use by certain vehicles with power attachments.*

(a) Off-Highway. -- A person who purchases and uses motor fuel for a purpose other than to operate a licensed highway vehicle may receive an annual refund for the tax the person paid on fuel used during the preceding calendar year at a rate equal to the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less one cent (1¢) per gallon. An application for a refund allowed under this section must be made in accordance with this Part.

(b) Certain Vehicles. -- A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by any of the following vehicles:

(1) A concrete mixing vehicle.
(2) A solid waste compacting vehicle.
(3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.
(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.
(5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.

The refund rate shall be computed by subtracting one cent (1¢) from the combined amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, and multiplying the difference by thirty-three and one-third percent (33 1/3%). An application for a refund allowed under this section shall be made in accordance with this Part. This

refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle.

"*§ 105-449.108. When an application for a refund is due.*

(a) Annual Refunds. -- An application for an annual refund of tax is due by April 15 following the end of the calendar year for which the refund is claimed. The application must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year, and must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

(b) Quarterly Refunds. -- An application for a quarterly refund of tax is due by the last day of the month following the end of the calendar quarter for which the refund is claimed. The application must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

(c) Upon Application. -- An application for a refund of tax upon application under G.S. 105-449.105 is due by the last day of the month that follows the payment of tax or other event that is the basis of the refund.

"*§ 105-449.109. Reduction or denial of late annual or quarterly refund application.*

An application filed with the Secretary within six months of the date the application is due must be accepted but is subject to a penalty of twenty-five percent (25%) of the amount of the refund otherwise due if the application is filed within 30 days after the date the application is due, and is subject to a penalty of fifty percent (50%) of the amount of the refund otherwise due if the application is filed more than 30 days but within six months after the date the application is due. The Secretary shall not accept an application filed more than six months after the date the application is due.

"*§ 105-449.110. Review of refund application and payment of refund.*

(a) Decision. -- Upon determining that an application for refund is correct, the Secretary must issue the applicant a warrant upon the State Treasurer for the amount of the refund. If the Secretary determines that an application for refund is incorrect, the Secretary must send a written notice of the determination to the applicant. The notice must advise the applicant that the applicant may request a hearing on the matter in accordance with Article 9 of this Chapter.

(b) Interest. -- The rate of interest payable on a refund is the rate set in G.S. 105-242.1(i). Interest accrues on a refund from the date that is 90 days after the later of the following:

(1) The date the application for refund was filed.

(2) The date the application for refund was due.

"Part 6. Enforcement and Administration.

"*§ 105-449.115. Shipping document required to transport motor fuel by railroad tank car or transport truck.*

(a) Issuance. -- A person may not transport motor fuel by railroad tank car or transport truck unless the person has a shipping document for its transportation that complies with this section. A terminal operator and the operator of a bulk plant must give a shipping document to the person who

operates a railroad tank car or a transport truck into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) Content. -- A shipping document issued by a terminal operator or the operator of a bulk plant must be machine-printed and must contain the following information and any other information required by the Secretary:

(1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.
(2) The date the motor fuel was loaded.
(3) The gross gallons loaded.
(4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.
(5) If the document is issued by a terminal operator, the following information:
    a. The net gallons loaded.
    b. A tax responsibility statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

(c) Reliance. -- A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser is liable for any tax due as a result of the purchaser's diversion of fuel from the represented destination state.

(d) Duties of Transporter. -- A person to whom a shipping document was issued must do all of the following:

(1) Carry the shipping document in the conveyance for which it was issued when transporting the motor fuel described in it.
(2) Show the shipping document to a law enforcement officer upon request when transporting the motor fuel described in it.
(3) Deliver motor fuel described in the shipping document to the destination state printed on it unless the person does all of the following:
    a. Notifies the Secretary before transporting the motor fuel into a state other than the printed destination state that the person has received instructions since the shipping document was issued to deliver the motor fuel to a different destination state.
    b. Receives from the Secretary a confirmation number authorizing the diversion.
    c. Writes on the shipping document the change in destination state and the confirmation number for the diversion.
(4) Give a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

(e) Duties of Person Receiving Shipment. -- A person to whom motor fuel is delivered by railroad tank car or transport truck may not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than North Carolina. To determine if the shipping document shows North Carolina as the destination state, the person to whom the fuel is delivered must examine the shipping document and must keep a copy of the shipping document. The person must keep a copy at the place of business where the motor fuel was delivered for 90 days from the

date of delivery and must keep it at that place or another place for at least three years from the date of delivery.

(f) Sanctions. -- The following acts are grounds for a civil penalty payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue:

(1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.

(2) Delivering motor fuel to a destination state other than that shown on the shipping document.

The penalty imposed under this subsection is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty depends on the amount of fuel improperly transported or diverted and whether the person against whom the penalty is assessed has previously been assessed a penalty under this subsection. For a first assessment under this subsection, the penalty is the amount of motor fuel tax payable on the improperly transported or diverted motor fuel. For a second or subsequent assessment under this subsection, the penalty is the greater of one thousand dollars ($1,000) or five times the amount of motor fuel tax payable on the improperly transported or diverted motor fuel. A penalty imposed under this subsection is in addition to any motor fuel tax assessed.

"*§ 105-449.116. Import confirmation number required for some imported motor fuel.*

A bonded importer or an occasional importer that acquires motor fuel for import by transport truck from a supplier that is not an elective supplier or a permissive supplier, and therefore will not be acting as trustee for the remittance of tax to the State on behalf of the importer, must obtain an import confirmation number from the Secretary before importing the motor fuel. The importer must write the import confirmation number on the shipping document issued for the fuel. The importer must obtain a separate import confirmation number for each transport truck delivery of motor fuel into this State.

"*§ 105-449.117. Penalties for highway use of dyed diesel or other non-tax-paid fuel.*

It is unlawful to use dyed diesel fuel for a highway use unless that use is permitted under section 4082 of the Code. A person who operates on a highway a highway vehicle whose supply tank contains dyed diesel fuel whose use is unlawful under this section or contains other fuel on which the tax imposed by this Article has not been paid is guilty of a Class 1 misdemeanor and is liable for a civil penalty.

The civil penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue and is payable by the person in whose name the highway vehicle is registered. The amount of the penalty depends on the amount of fuel in the supply tank of the highway vehicle. The penalty is the greater of one thousand dollars ($1,000) or five times the amount of motor fuel tax payable on the fuel in the supply tank.

A penalty imposed under this section is in addition to any motor fuel tax assessed.

"§ *105-449.118. Civil penalty for buying or selling non-tax-paid motor fuel.*

A person who dispenses non-tax-paid motor fuel into the supply tank of a highway vehicle or who allows non-tax-paid motor fuel to be dispensed into the supply tank of a highway vehicle is subject to a civil penalty. The penalty is based on the amount of motor fuel dispensed and is set at the following amounts:

Number of Gallons Dispensed	Penalty
Less than 25	$ 75.00
At least 25 but less than 50	150.00
At least 50	300.00.

The penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue. Failure to pay a penalty imposed under this section is grounds under G.S. 20-88.01(b) to withhold or revoke the registration plate of the motor vehicle into which the motor fuel was dispensed.

"§ *105-449.119. Hearing on civil penalty assessment.*

A person who denies liability for a penalty imposed under this Part must pay the penalty under protest and make a written demand to the Department of Revenue for a refund. The written demand must be made within 30 days after the penalty is imposed. Upon receiving a demand for a refund, the Secretary shall schedule a hearing on the matter before an employee or an agent of the Department. The hearing must be held within 30 days after receiving the written demand for a refund. If, after the hearing, the Department determines that the person was not liable for the penalty, the amount collected shall be refunded. If after the hearing the Department determines that the person was liable for the penalty, the person paying the penalty may appeal the imposition of the penalty in accordance with G.S. 105-241.2, 105-241.3, and 105-241.4.

"§ *105-449.120. Acts that are misdemeanors.*

(a) Class 1. -- A person who commits any of the following acts is guilty of a Class 1 misdemeanor:

(1) Fails to obtain a license required by this Article.

(2) Willfully fails to make a report required by this Article.

(3) Willfully fails to pay a tax when due under this Article. Failure to comply with a requirement of a supplier to remit tax payable to the supplier by electronic funds transfer is considered a failure to make a timely payment.

(4) Makes a false statement in an application, a report, or a statement required under this Article.

(5) Makes a false statement in an application for a refund.

(6) Fails to keep records as required under this Article.

(7) Refuses to allow the Secretary or a representative of the Secretary to examine the person's books and records concerning motor fuel.

(8) Fails to disclose the correct amount of motor fuel sold or used in this State.

(9) Fails to file a replacement bond or an additional bond as required under this Article.

(10) Fails to show or give a shipping document as required under this Article.

(b) Class 2. -- A person who commits any of the following acts is guilty of a Class 2 misdemeanor:

(1) Knowingly dispenses non-tax-paid motor fuel into the supply tank of a highway vehicle.

(2) Knowingly allows non-tax-paid fuel to be dispensed into the supply tank of a highway vehicle.

"*§ 105-449.121. Record-keeping requirements; inspection authority.*

(a) What Must Be Kept. -- A person who is required to submit a report or file a return under Part 4 of this Article must keep a record of all shipping documents or other documents used to determine the information provided in the report or return. The records must be kept for three years from the due date of the report or return to which the records apply.

(b) Inspection. -- The Secretary or a person designated by the Secretary may do any of the following to determine tax liability under this Article:

(1) Audit a distributor or a person who is required to have or elects to have a license under this Article.

(2) Audit a distributor or a motor fuel user that is not licensed under this Article.

(3) Examine a tank or other equipment used to make, store, or transport motor fuel, diesel dyes, or diesel markers.

(4) Take a sample of a product from a vehicle, a tank, or another container in a quantity sufficient to determine the composition of the product.

(5) Stop a vehicle for the purpose of taking a sample of motor fuel from the vehicle.

"*§ 105-449.122. Miscellaneous requirements.*

(a) Metered Pumps. -- All motor fuel dispensed at retail must be dispensed from metered pumps that indicate the total amount of fuel measured through the pumps. Each pump must be marked to indicate the type of motor fuel dispensed.

(b) Truck Equipment. -- A highway vehicle that transports diesel fuel in a tank that is separate from the fuel supply tank of the vehicle may not have a connection from the transporting tank to the motor or to the supply tank of the vehicle.

"Part 7. Use of Revenue.

"*§ 105-449.125. Distribution of tax revenue among various funds and accounts.*

The Secretary shall allocate the amount of revenue collected under this Article from an excise tax of one-half cent (1/2¢) a gallon to the following funds and accounts in the fraction indicated:

Fund or Account	Amount
Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.....	Nineteen thirty-seconds
Noncommercial Leaking Petroleum	

Underground Storage Tank Cleanup Fund.....	Three thirty-seconds
Water and Air Quality Account.....	Five-sixteenths.

The Secretary shall allocate seventy-five percent (75%) of the remaining excise tax revenue collected under this Article to the Highway Fund and shall allocate twenty-five percent (25%) to the Highway Trust Fund.

The Secretary shall charge a proportionate share of a refund allowed under this Article to each fund or account to which revenue collected under this Article is credited. The Secretary shall credit revenue or charge refunds to the appropriate funds or accounts on a monthly basis.

"§ 105-449.126. Distribution of part of Highway Fund allocation to Wildlife Resources Fund.

The Secretary shall credit to the Wildlife Resources Fund one-sixth of one percent (1/6 of 1%) of the amount that is allocated to the Highway Fund under G.S. 105-449.125 and is from the excise tax on gasoline or blended fuel that contains gasoline. Revenue credited to the Wildlife Resources Fund under this section may be used only for the boating and water safety activities described in G.S. 75A-3(c). The Secretary must credit revenue to the Wildlife Resources Fund on an annual basis.

"§ 105-449.127. Civil penalties.

The Secretary must credit civil penalties collected under this Article to the Highway Fund as nontax revenue.

"ARTICLE 36D.

"Alternative Fuel.

"§ 105-449.130. Definitions.

The following definitions apply in this Article:

(1) Alternative fuel. -- A combustible gas or liquid that can be used to generate power to operate a highway vehicle and that is not subject to tax under Article 36C of this Chapter.
(2) Highway. -- Defined in G.S. 20-4.01(13).
(3) Highway vehicle. -- Defined in G.S. 105-449.60.
(4) Motor fuel. -- Defined in G.S. 105-449.60.
(5) Motor fuel rate. -- Defined in G.S. 105-449.60.

"§ 105-449.131. List of persons who must have a license.

A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

(1) A provider of alternative fuel.
(2) A bulk-end user of alternative fuel that uses part or all of the fuel in a highway vehicle.
(3) A retailer of alternative fuel that sells part or all of the fuel for use in a highway vehicle.

"§ 105-449.132. How to apply for a license.

To obtain a license, an applicant must file an application with the Secretary on a form provided by the Secretary. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary.

"§ 105-449.133. Bond or letter of credit required as a condition of obtaining and keeping license as alternative fuel provider.

An applicant for a license as an alternative fuel provider must file with the Secretary a bond or an irrevocable letter of credit in an amount that would be required if the fuel the applicant intended to provide was motor fuel rather than alternative fuel. An applicant that is also required to file a bond or an irrevocable letter of credit under G.S. 105-449.72 to obtain a license as a distributor of motor fuel may file a single bond or irrevocable letter of credit under that section for the combined amount.

A bond filed under this subsection must be conditioned upon compliance with this Article, be payable to the State, and be in the form required by the Secretary. The Secretary may require a bond issued under this subsection to be adjusted in accordance with the procedure set out in G.S. 105-449.72 for adjusting a bond filed by a distributor of motor fuel.

"*§ 105-449.134. Denial or cancellation of license.*

The Secretary may deny an application for a license or cancel a license under this Article for the same reasons that the Secretary can deny an application for a license or cancel a license under Article 36C of this Chapter. The procedure in Article 36C for cancelling a license applies to the cancellation of a license under this Article.

"*§ 105-449.135. Issuance of license; notification of changes.*

(a) Issuance. -- The Secretary must issue a license to each applicant whose application is approved. A license is not transferable and remains in effect until surrendered or cancelled.

(b) Notice. -- A license holder that stops engaging in this State in the business for which the license was issued must give the Secretary written notice of the change and must surrender the license. The notice must give the date the change takes effect and, if the license holder has transferred the business to another by sale or otherwise, the date of the transfer and the name and address of the person to whom the business is transferred.

All taxes for which the license holder is liable under this Article but are not yet due become due on the date of the change. If the license holder transfers the business to another and does not give the notice required by this section, the person to whom the business was transferred is liable for the amount of any tax the license holder owed the State on the date the business was transferred. The liability of the person to whom the business is transferred is limited to the value of the property acquired from the license holder.

"*§ 105-449.136. Tax on alternative fuel.*

A tax at the equivalent of the motor fuel rate is imposed on alternative fuel used to operate a highway vehicle. The Secretary must determine the equivalent rate. The exemptions from the tax on motor fuel in G.S. 105-449.88(2), (3), and (4) apply to the tax imposed by this section. The refunds for motor fuel tax allowed by Part 5 of Article 36C of this Chapter apply to the tax imposed by this section. The proceeds of the tax imposed by this section must be allocated in accordance with G.S. 105-449.125.

"*§ 105-449.137. Liability for and payment of the tax.*

(a) Liability. -- The alternative fuel provider that sells or delivers alternative fuel is liable for the tax imposed by this Article.

(b) Payment. -- The tax imposed by this Article is payable when a return is due. A return is due monthly within 25 days after the end of each

month. A monthly return covers liabilities that accrue in the calendar month preceding the date the return is due. A return must be filed with the Secretary and must be in the form and contain the information required by the Secretary.

"*§ 105-449.138. Requirements for bulk-end users and retailers.*

(a) Reports. -- A bulk-end user of alternative fuel that uses part or all of the fuel in a highway vehicle and a retailer of alternative fuel that sells part or all of the fuel for use in a highway vehicle must file a quarterly report with the Secretary. A quarterly report covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the report.

The report must give the following information and any other information required by the Secretary:

(1) The amount of alternative fuel received during the quarter.

(2) The amount of alternative fuel sold or used during the quarter.

(b) Storage. -- A storage facility used by a bulk-end user of alternative fuel or a retailer of alternative fuel must be marked in a manner similar to that required for diesel fuel by G.S. 105-449.87(c) if the alternative fuel stored in the facility is to be used for a purpose other than to operate a highway vehicle.

"*§ 105-449.139. Miscellaneous provisions.*

(a) Records. -- A license holder must keep a record of all documents used to determine the information provided in a return filed under this Article. The records must be kept for three years from the due date of the return to which the records apply. The records are open to inspection during business hours by the Secretary or a person designated by the Secretary.

(b) Violations. -- The offenses listed in subdivisions (1) through (9) of G.S. 105-449.120 apply to this Article. In applying those offenses to this Article, references to 'this Article' are to be construed as references to Article 36D and references to 'motor fuel' are to be construed as references to alternative fuel."

PART II.

TRANSITIONAL PROVISIONS

Sec. 4. December 1995, Fuel Tax Liabilities. -- A distributor of gasoline or a supplier of diesel fuel that incurs liability in December of 1995 under Article 36 or 36A of Chapter 105 of the General Statutes for the per gallon excise taxes on gasoline and diesel fuel imposed by those Articles shall report the liability and pay the taxes in January of 1996 as if those Articles had not been repealed.

Sec. 5. Floor Stocks Tax. -- Every distributor of motor fuel, both at wholesale and retail, and every supplier or reseller of special fuel must inventory all motor fuel that is on hand or in the person's possession as of 12:01 a.m. on January 1, 1996, and is not in the terminal transfer system and must report the results of the inventory to the Secretary of Revenue. The amount of motor fuel in dead storage is not considered to be part of inventory and shall not be included in the report. "Dead storage" is the amount of motor fuel in a storage tank that will not be pumped out of the tank because the motor fuel is below the mouth of the draw pipe. For a storage tank with a capacity of less than 10,000 gallons, the amount of

motor fuel in dead storage is considered to be 200 gallons. For a storage tank with a capacity of 10,000 gallons or more, the amount of motor fuel in dead storage is considered to be 400 gallons. The report of inventory must be made on a form provided by the Secretary. The report is due by January 15, 1996.

A tax at the rate set in G.S. 105-449.80, as enacted by this act, is imposed on all fuel that is included in the reportable inventory of a distributor, a supplier, or a reseller. The tax does not apply, however, to fuel on which the per gallon excise taxes imposed by former Articles 36 and 36A of Chapter 105 of the General Statutes have been paid nor to fuel for which liability for those taxes attached before the repeal of those Articles.

A distributor, a supplier, or a reseller may pay the tax due on fuel in inventory at any time before February 28, 1997, but at least one-twelfth of the amount due must be paid by the last day of each month starting with February of 1996. Payments not received in accordance with this monthly requirement are late and are subject to penalties and interest under Article 9 of Chapter 105 of the General Statutes. All payments made after February 28, 1997, are late and are subject to penalties and interest under Article 9 of Chapter 105 of the General Statutes.

Sec. 6. All licenses issued under Article 36 or 36A of Chapter 105 of the General Statutes expire January 1, 1996. The Secretary of Revenue must give written notice of this expiration to all license holders by September 1, 1995.

A distributor of gasoline under Article 36 or a supplier of special fuel under Article 36A that intends to remain in business as a distributor under Article 36C of Chapter 105 of the General Statutes, as enacted by this act, may obtain a replacement license as a distributor without making a new application by notifying the Secretary of Revenue that the person wants a replacement license. The Secretary of Revenue must issue a replacement distributor license to a distributor or supplier that requests one without requiring a new application or a change in the amount of bond required. The Secretary of Revenue may, however, require an applicant for a replacement distributor license to identify the states to which the distributor intends to export motor fuel and give information on whether the distributor is licensed or registered for motor fuel tax purposes in those states.

A bulk user or a reseller of fuel under Article 36A of Chapter 105 of the General Statutes that intends to store or sell at retail undyed diesel fuel after December 31, 1995, may obtain a replacement license as a bulk-end user of undyed diesel fuel or a retailer of undyed diesel fuel, respectively, without making a new application by notifying the Secretary of Revenue that the person wants a replacement license. The Secretary of Revenue must issue the appropriate replacement license without requiring a new application.

Sec. 7. Notwithstanding G.S. 105-449.80, as enacted by this act, the weighted average of gasoline and diesel fuel used to determine the variable component of the per gallon excise tax to be in effect for the six-month period beginning July 1, 1996, shall be computed based on the tax collected on gasoline and diesel #2 during the base period under former Articles 36

and 36A of Chapter 105 of the General Statutes and under Article 36C of that Chapter, as enacted by this act.

Sec. 8. Notwithstanding G.S. 105-449.90, as enacted by this act, a tax return of an occasional importer that is due for a month in the 1996 calendar year is due by the 17th of the month rather than the 1st of the month.

Sec. 9. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Sec. 10. This act does not affect the authority of the Department of Revenue under Chapter 753 of the 1989 Session Laws to enter into a memorandum of understanding or an agreement with the Tribal Council of the Eastern Band of Cherokee Indians to make refunds of motor fuel taxes and alternative fuel taxes to the Tribe in its collective capacity on behalf of members of the Tribe.

PART III.

CONFORMING CHANGES

Sec. 11. G.S. 20-88.01 reads as rewritten:

"*§ 20-88.01. Revocation of registration for failure to register for or comply with road tax or pay civil penalty for buying or selling non-tax-paid fuel.*

(a) Road Tax. -- The Secretary of Revenue may notify the Commissioner of those motor vehicles that are registered or are required to be registered under Article 36B of Chapter 105 and whose owners or lessees, as appropriate, are not in compliance with Article ~~36A or 36B~~ 36B, 36C, or 36D of Chapter 105. When notified, the Commissioner shall withhold or revoke the registration plate for the vehicle.

(b) Non-tax-paid Fuel. -- The Secretary of Revenue may notify the Commissioner of those motor vehicles for which a civil penalty imposed under G.S. ~~105-441.1 or G.S. 105-449.24~~ 105-449.118 has not been paid. When notified, the Commissioner shall withhold or revoke the registration plate of the vehicle."

Sec. 12. G.S. 75-81(3) reads as rewritten:

"(3) 'Motor Fuel' ~~shall mean a refined or blended petroleum product used for the propulsion of self-propelled motor vehicles; the term includes "motor fuel" as defined in G.S. 105-430 and "fuel" as defined in G.S. 105-449.2,~~ means motor fuel, as defined in G.S. 105-449.60, and alternative fuel, as defined in G.S. 105-449.130."

Sec. 13. G.S. 75A-3(c) reads as rewritten:

"(c) The Boating Account is established within the Wildlife Resources Fund created under G.S. 143-250. All moneys collected pursuant to the numbering and titling provisions of this Chapter ~~and pursuant to G.S. 105-446.2~~ shall be credited to this ~~Account and~~ Account. Gasoline excise tax revenue is credited to the Account under G.S. 105-449.126. Revenue in the Account shall be used by the Wildlife Resources Commission, subject to the Executive Budget Act and the Personnel Act, for the administration and enforcement of this Chapter; for activities relating to boating and water

safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance."

Sec. 14. G.S. 105-164.13(11) reads as rewritten:

"(11) ~~Gasoline or other motor fuel on which the tax levied in G.S. 105-434 and/or G.S. 105-435 is due and has been paid, and the fact that a refund of the tax levied by either of said sections is made pursuant to the provisions of Subchapter V of Chapter 105 shall not make the sale or the seller of such fuels subject to the tax levied by this Article.~~ Motor fuel subject to tax under Article 36C of this Chapter and alternative fuel subject to tax under Article 36D of this Chapter, regardless of whether those Articles exempt the fuel from tax or allow a refund of tax paid on the fuel."

Sec. 15. G.S. 105-253(b) reads as rewritten:

"(b) Each responsible corporate officer is personally and individually liable for all of the following:

(1) All sales and use taxes collected by a corporation upon taxable transactions of the corporation.

(2) All sales and use taxes due upon taxable transactions of the corporation but upon which the corporation failed to collect the tax, but only if the responsible officer knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

(3) All taxes due from the corporation pursuant to the provisions of Article ~~36 and Article 36A~~ 36C and 36D of Subchapter V of this Chapter.

The liability of the responsible corporate officer is satisfied upon timely remittance of the tax to the Secretary by the corporation. If the tax remains unpaid by the corporation after it is due and payable, the Secretary may assess the tax against, and collect the tax from, any responsible corporate officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term 'responsible corporate officer' includes the president and the treasurer of the corporation and any other officers assigned the duty of filing tax returns and remitting taxes to the Secretary on behalf of the corporation. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency shall apply to any assessment made under this section. The provisions of this Article apply to an assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible corporate officer for unpaid taxes under this section shall expire one year after the expiration of the period of limitations for assessment against the corporation."

Sec. 16. G.S. 105-449.38 reads as rewritten:

"*§ 105-449.38. Tax levied.*

A road tax for the privilege of using the streets and highways of this State is ~~hereby~~ imposed upon every motor carrier on the amount of ~~gasoline or other~~ motor fuel or alternative fuel used by ~~such motor~~ the carrier in its operations within this State. The tax shall be at the rate established by the Secretary pursuant to G.S. ~~105-434. Except as credit for certain taxes as~~

~~hereinafter provided for in this Article, taxes imposed on motor carriers by this Article are~~ 105-449.80 or G.S. 105-449.134, as appropriate. This tax is in addition to any other taxes imposed on ~~such carriers by any other provisions of law. The tax herein levied is for the same purposes as the tax imposed under the provisions of G.S. 105-434.~~ motor carriers."

Sec. 17. G.S. 105-449.43 reads as rewritten:

"§ *105-449.43. Application of tax proceeds.*

~~The same percentage amounts of tax~~ Tax revenue collected under this Article and tax refunds or credits allowed under this Article shall be ~~credited to the Highway Fund and to the Highway Trust Fund as are credited to those Funds under G.S. 105-445, and the same percentage amounts of refunds or credits allowed under this Article shall be charged to the Highway Fund and the Highway Trust Fund as are charged to those Funds under that statute.~~ allocated among and charged to the funds and accounts listed in G.S. 105-449.125 in accordance with that section."

Sec. 18. G.S. 105-449.47 reads as rewritten:

"§ *105-449.47. Registration of vehicles.*

A motor carrier may not operate or cause to be operated in this State any vehicle listed in the definition of motor carrier unless both the motor carrier and the motor vehicle are registered with the Secretary for purposes of the tax imposed by this Article.

Upon application, the Secretary shall register a motor carrier and shall issue at least one identification marker for each motor vehicle operated by the motor carrier. A copy of the registration of a motor carrier shall be carried in each motor vehicle operated by the motor carrier when the vehicle is in this State. An identification marker shall be clearly displayed at all times and shall be affixed to the vehicle for which it was issued in the place and manner designated by the Secretary. Registrations and identification markers required by this section shall be issued on a calendar year basis. The Secretary may renew a registration or an identification marker without issuing a new registration or identification marker. All identification markers issued by the Secretary remain the property of the State. The Secretary may withhold or revoke a registration or an identification marker when a motor carrier fails to comply with this Article or Article ~~36A~~ 36C or 36D of this Subchapter."

Sec. 19. G.S. 119-15 reads as rewritten:

"§ *119-15. ~~'Gasoline' defined.~~ Definitions that apply to Article.*

The following definitions apply in this Article:

(1) Alternative fuel. -- Defined in G.S. 105-449.130.

(2) Gasoline. -- Defined in G.S. 105-449.60.

(3) Kerosene. -- Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted by the Gasoline and Oil Inspection Board.

(4) Motor fuel. -- Defined in G.S. 105-449.60.

(5) Person. -- Defined in G.S. 105-229.90.

~~The term "gasoline" wherever used in this Article shall be construed to mean refined petroleum naphtha which by its composition is suitable for use as a carburant in internal combustion engines.~~"

Sec. 20. G.S. 119-16 is repealed.

Sec. 21. G.S. 119-16.1 is repealed.

Sec. 22. G.S. 119-16.2 reads as rewritten:

"*§ 119-16.2. Application for license.*

A person may not engage in business as a kerosene distributor unless the person ~~has either a license issued under G.S. 105-433~~ is licensed as a supplier or a distributor under Part 2 of Article 36C of Chapter 105 of the General Statutes or has a kerosene license issued under this section. To obtain a license under this section, an applicant must file an application with the Secretary of Revenue on a form provided by the Secretary and file with the Secretary a bond in the amount required by the Secretary, not to exceed twenty thousand dollars ($20,000). An applicant must give the Secretary the same information the applicant would be required to give under ~~G.S. 105-433~~ Part 2 of Article 36C of Chapter 105 of the General Statutes if the applicant were applying for a license under that ~~section.~~ Part. A bond filed under this section must be conditioned on compliance with this Article, be payable to the State, and be in the form required by the Secretary. A license issued under this section remains in effect until surrendered or canceled, must be displayed in the same manner as a license issued under ~~G.S. 105-433,~~ Part 2 of Article 36C of Chapter 105 of the General Statutes, and is subject to the same restrictions as a license issued under that ~~section.~~ Part. A person who fails to comply with this section is guilty of a Class 1 misdemeanor."

Sec. 23. G.S. 119-18(a) reads as rewritten:

"(a) Tax. -- An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all ~~kerosene and motor fuel,~~ kerosene, motor fuel, and alternative fuel. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under ~~Articles 36 and 36A~~ Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a distributor required to be licensed under G.S. 119-16.2. A monthly report by a distributor required to be licensed under G.S. 119-16.2 is due by the 20th of each month and applies to kerosene received by the distributor during the preceding month."

Sec. 24. G.S. 119-19 reads as rewritten:

"*§ 119-19. ~~Failure to report or pay tax; cancellation of license.~~ Authority of Secretary to cancel a license.*

~~If any person shall at any time file a false report of the data or information required by law, or shall fail or refuse or neglect to file any report required by law, or to pay the full amount of the tax as required by law, the Secretary of Revenue may forthwith cancel the license of such person issued under G.S. 105-433 or 119-16.2, and notify such person in writing of such cancellation by registered mail to the last known address of such person appearing in the files of the Secretary of Revenue. In the event that the license of any person shall be canceled by the Secretary of Revenue as hereinbefore provided in this section, and in the event such person shall have paid to the State of North Carolina all the taxes due and payable by~~

~~him under this Article, together with any and all penalties accruing under any of the provisions of this Article, then the Secretary of Revenue shall cancel and surrender the bond theretofore filed by said person under G.S. 105-433 or 119-16.2.~~ The Secretary of Revenue may cancel a license issued under G.S. 119-16.2 upon the written request of the license holder. The Secretary may summarily cancel a license issued under G.S. 119-16.2 or Article 36C or 36D of Chapter 105 of the General Statutes when the Secretary finds that the license holder is incurring liability for the tax imposed by this Article after failing to pay a tax when due under this Article. The Secretary may cancel the license of a license holder who files a false report under this Article or fails to file a report required under this Article after holding a hearing on whether the license should be cancelled.

The Secretary must send a person whose license is summarily cancelled a notice of the cancellation and must give the person an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary must give a person whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a notice of hearing must be sent by registered mail to the last known address of the license holder.

When the Secretary cancels a license and the license holder has paid all taxes and penalties due under this Article, the Secretary must either return to the license holder the bond filed by the license holder or notify the person liable on the bond and the license holder that the person is released from liability on the bond."

Sec. 25. G.S. 119-22 is repealed.

Sec. 26. G.S. 136-41.1(a) reads as rewritten:

"(a) There is annually appropriated out of the State Highway Fund a sum equal to the net amount after refunds that was produced during the fiscal year by a one and three-fourths cents (1 3/4¢) tax on each gallon of motor fuel ~~as~~ taxed ~~by G.S. 105-434 and 105-435, to~~ under Article 36C of Chapter 105 of the General Statutes and on the equivalent amount of alternative fuel taxed under Article 36D of that Chapter. The amount appropriated shall be allocated in cash on or before October 1 of each year to the cities and towns of the State in accordance with this section. In addition, as provided in G.S. 136-176(b)(3), revenue is allocated and appropriated from the Highway Trust Fund to the cities and towns of this State to be used for the same purposes and distributed in the same manner as the revenue appropriated to them under this section from the Highway Fund. Like the appropriation from the Highway Fund, the appropriation from the Highway Trust Fund shall be based on revenue collected during the fiscal year preceding the date the distribution is made.

Seventy-five percent (75%) of the funds appropriated for cities and towns shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer. This annual estimation of population shall include increases in the population within the municipalities caused by annexations accomplished through July 1 of the calendar year in which these

funds are distributed. Twenty-five percent (25%) of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the mileage of public streets in each eligible municipality which does not form a part of the State highway system bears to the total mileage of the public streets in all eligible municipalities which do not constitute a part of the State highway system.

It shall be the duty of the mayor of each municipality to report to the Department of Transportation such information as it may request for its guidance in determining the eligibility of each municipality to receive funds under this section and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the Department of Transportation, the Department of Transportation may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 of each year. Provided that eligible municipalities are authorized within the discretion of their governing bodies to enter into contracts for the purpose of maintenance, repair, construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety percent (90%) of the amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of funds under this section during the next fiscal year, to be paid for out of such funds when received.

The Department of Transportation may withhold each year an amount not to exceed one percent (1%) of the total amount appropriated for distribution under this section for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word 'street' as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than 16 feet. In order to obtain the necessary information to distribute the funds herein allocated, the Department of Transportation may require that each municipality eligible to receive funds under this section submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The Department of Transportation may in its discretion require the certification of mileage on a biennial basis."

Sec. 27. G.S. 136-176(a)(1) reads as rewritten:

"(1) Motor fuel, ~~special fuel,~~ alternative fuel, and road tax revenue deposited in the Fund under G.S. ~~105-445, 105-449.16,~~ 105-449.125, 105-449.134, and 105-449.43, respectively."

Sec. 28. G.S. 143-215.3A(a) reads as rewritten:

"(a) The Water and Air Quality Account is established as a nonreverting account within the Department. Revenue in the Account shall be applied to the costs of administering the programs for which the fees were collected. Revenue credited to the Account pursuant to G.S. ~~105-445~~ 105-449.125, 105-449.134, and 105-449.43 shall be used to administer the air quality program. Except for the following fees, all application fees and permit

administration fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38 of this Chapter shall be credited to the Account:

(1) Fees collected under Part 2 of Article 21A and credited to the Oil or Other Hazardous Substances Pollution Protection Fund.
(2) Fees credited to the Title V Account.
(3) Fees credited to the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund under G.S. 143-215.3B.
(4) Fees collected under G.S. 143-215.28A."

Sec. 29. G.S. 150B-2(8a)j. reads as rewritten:

"j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.1 and the variable component of the excise tax on motor fuel under G.S. ~~105-434.~~ 105-449.80."

PART IV.

REPEAL MINIMUM HIGHWAY USE TAX

Sec. 30. G.S. 105-187.3(a) reads as rewritten:

"(a) Amount. -- The rate of the use tax imposed by this Article is three percent (3%) of the retail value of a motor vehicle for which a certificate of title is issued. The tax is payable as provided in G.S. 105-187.4. ~~The tax may not be less than forty dollars ($40.00) for each motor vehicle for which a certificate of title is issued, unless the issuance of a title for the vehicle is exempt from tax under G.S. 105-187.6(a).~~ The tax may not be more than one thousand dollars ($1,000) for each certificate of title issued for a Class A or Class B motor vehicle that is a commercial motor vehicle, as defined in G.S. 20-4.01. The tax may not be more than one thousand five hundred dollars ($1,500) for each certificate of title issued for any other motor vehicle."

Sec. 31. G.S. 105-187.6(b) reads as rewritten:

"(b) Partial Exemptions. -- A maximum tax of forty dollars ($40.00) ~~Only the minimum tax imposed by this Article~~ applies when a certificate of title is issued as the result of a transfer of a motor vehicle:

(1) To a secured party who has a perfected security interest in the motor vehicle.
(2) To a partnership or corporation as an incident to the formation of the partnership or corporation and no gain or loss arises on the transfer under section 351 or section 721 of the Internal Revenue Code, or to a corporation by merger or consolidation in accordance with G.S. 55-11-06."

Sec. 32. G.S. 105-187.7 reads as rewritten:

"*§ 105-187.7. Credit for tax paid in another state.*

A person who, within 90 days before applying for a certificate of title for a motor vehicle on which the tax imposed by this Article is due, has paid a sales tax, an excise tax, or a tax substantially equivalent to the tax imposed by this Article on the vehicle to a taxing jurisdiction outside this State is entitled to a credit against the tax due under this Article for the amount of tax paid to the other jurisdiction. ~~The credit may not reduce the person's liability under this Article below the minimum forty-dollar ($40.00) tax.~~"

Sec. 33. G.S. 105-187.8 reads as rewritten:

"*§ 105-187.8. Refund for return of purchased motor vehicle.*

When a purchaser of a motor vehicle returns the motor vehicle to the seller of the motor vehicle within 90 days after the purchase and receives a vehicle replacement for the returned vehicle or a refund of the price paid the seller, whether from the seller or the manufacturer of the vehicle, the purchaser may obtain a refund of the privilege tax paid on the certificate of title issued for the returned motor ~~vehicle, less the minimum tax of forty dollars ($40.00),~~ vehicle.

To obtain a refund, the purchaser must apply to the Division for a refund within 30 days after receiving the replacement vehicle or refund of the purchase price. The application must be made on a form prescribed by the Commission and must be supported by documentation from the seller of the returned vehicle."

Sec. 34. G.S. 20-85(b) reads as rewritten:

"(b) ~~Thirty-one dollars and fifty cents ($31.50) of each title fee collected under subdivision (a)(1) of this section and all of the fees~~ Fees collected under ~~the other subdivisions in~~ subsection (a) of this section shall be credited to the North Carolina Highway Trust ~~Fund; the remaining three dollars and fifty cents ($3.50) of the title fee collected under subdivision (a)(1) shall be credited to the Highway~~ Fund. Fifteen dollars ($15.00) of each title fee credited to the Trust Fund under subdivision (a)(1) shall be added to the amount allocated for secondary roads under G.S. 136-176 and used in accordance with G.S. 136-44.5."

PART V.

MOTOR CARRIER ENFORCEMENT

Sec. 35. G.S. 105-449.44 reads as rewritten:

"*§ 105-449.44. How to determine the amount of fuel used in ~~State ascertained.~~ the State; presumption of amount used.*

(a) Calculation. -- The amount of gasoline or other motor fuel used in the operations of any motor carrier within this State shall be such proportion of the total amount of such gasoline or other motor fuel used in its entire operations within and without this State as the total number of miles traveled within this State bears to the total number of miles traveled within and without this State.

(b) Presumption. -- The Secretary shall check reports filed under this Article against the weigh station records and other records of the Division of Motor Vehicles of the Department of Transportation concerning motor carriers to determine if motor carriers that are operating in this State are filing the reports required by this Article. A motor carrier that does either of the following for a quarter is presumed to have traveled in this State during that quarter the number of miles equal to 10 trips of 450 miles each for each of the motor carrier's vehicles:

(1) Fails to file a report for the quarter and the records of the Division indicate the carrier operated in this State during the quarter.

(2) Files a report for the quarter that, based on the records of the Division, understates by at least twenty-five percent (25%) the carrier's mileage in this State for the quarter.

The number of vehicles of a motor carrier that is registered under this Article is the number of identification markers issued to the carrier. The number of vehicles of a carrier that is not registered under this Article is the

number of vehicles registered by the motor carrier in the carrier's base state under the International Registration Plan. The Department shall assess a motor carrier for the amount payable based on the presumed mileage."

Sec. 36. G.S. 105-236 is amended by adding a new subdivision to read:

"(5b) Road Tax Understatement. -- If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency."

PART VI.

EFFECTIVE DATES

Sec. 37. Section 6 of Part II of this act and this Part are effective upon ratification. Part I of this act, the remainder of Part II of this act, and Part III of this act become effective January 1, 1996. Part IV of this act becomes effective July 1, 1996. Part V of this act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

H.B. 733 **CHAPTER 391**

AN ACT TO ALLOW LAW-ENFORCEMENT OFFICERS TO TAKE PHYSICAL CUSTODY OF JUVENILES SIXTEEN AND SEVENTEEN YEARS OF AGE WHO ARE BEYOND THE DISCIPLINARY CONTROL OF THEIR PARENTS AND ABSENT FROM HOME.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-571 reads as rewritten:

"§ *7A-571. Taking a juvenile into temporary custody.*

(a) Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for secure or nonsecure custody can be obtained. A juvenile may be taken into temporary custody under the following circumstances:

(1) A juvenile may be taken into temporary custody by a law-enforcement officer without a court order if grounds exist for the arrest of an adult in identical circumstances under G.S. 15A-401(b).

(2) A juvenile may be taken into temporary custody without a court order by a law-enforcement officer or a court counselor if there are reasonable grounds to believe that the juvenile is an undisciplined juvenile.

(3) A juvenile may be taken into temporary custody without a court order by a law-enforcement officer or a Department of Social Services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order. If a Department of Social Services worker takes a juvenile into temporary custody under this

subdivision, the worker may arrange for the placement, care, supervision, and transportation of the juvenile.

(4) A juvenile may be taken into custody without a court order by a law-enforcement officer, by a court counselor, by a member of the Black Mountain Center, Alcohol Rehabilitation Center and Juvenile Evaluation Center Joint Security Force established pursuant to G.S. 122C-421, or by personnel of the Division of Youth Services as designated by the Department of Human Resources if there are reasonable grounds to believe the juvenile is an absconder from any State training school or approved detention facility.

(b) A law-enforcement officer may take physical custody of a juvenile who is 16 or 17 years of age without a court order, at the request of the juvenile's parent, guardian, or custodian if there are reasonable grounds to believe the juvenile is beyond the disciplinary control of the juvenile's parent, guardian, or custodian and has been absent from the home without permission for 48 consecutive hours."

Sec. 2. G.S. 7A-572 reads as rewritten:

"§ *7A-572. Duties of person taking juvenile into temporary custody.*

(a) A person who takes a juvenile into custody without a court order under ~~G.S. 7A-571(1), (2), or (3)~~ G.S. 7A-571(a)(1), (a)(2), or (a)(3) shall proceed as follows:

(1) Notify the juvenile's parent, guardian, or custodian that the juvenile has been taken into temporary custody and advise the parent, guardian, or custodian of the right to be present with the juvenile until a determination is made as to the need for secure or nonsecure custody. Failure to notify the parent that the juvenile is in custody shall not be grounds for release of the juvenile;

(2) Release the juvenile to the juvenile's parent, guardian, or custodian if the person having the juvenile in temporary custody decides that continued custody is unnecessary. In the case of a juvenile unlawfully absent from school, if continued custody is unnecessary, the person having temporary custody may deliver the juvenile to the juvenile's school or, if the local city or county government and the local school board adopt such a policy, to a place in the local school administrative unit.

(3) If the juvenile is not released under subsection (b) of this section, the person having temporary custody shall proceed as follows:

a. In the case of a juvenile alleged to be delinquent or undisciplined, the person having temporary custody shall request a petition be drawn pursuant to G.S. 7A-561 or if the clerk's office is closed, the magistrate pursuant to G.S. 7A-562. Once the petition has been drawn and verified, the person shall communicate with the intake counselor who shall consider prehearing diversion. If the decision is made to file a petition, the intake counselor shall contact the judge or person delegated authority pursuant to G.S. 7A-573 if other than the intake counselor for a determination of the need for continued custody.

b. In the case of a juvenile alleged to be abused, neglected, or dependent, the person having temporary custody shall communicate with the Director of the Department of Social Services who shall consider prehearing diversion. If the decision is made to file a petition, the director shall contact the judge or person delegated authority pursuant to G.S. 7A-573 for a determination of the need for continued custody.

(4) A juvenile taken into temporary custody under this Article shall not be held for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a Saturday, Sunday, or legal holiday, unless:

a. A petition or motion for review has been filed by an intake counselor or the Director of the Department of Social Services, and

b. An order for secure or nonsecure custody has been entered by a judge.

(b) A person who takes a juvenile into custody under ~~G.S. 7A-571(4)~~ G.S. 7A-571(a)(4) shall, after contacting a judge and receiving an order for secure custody, transport the juvenile to the nearest approved facility providing secure custody. ~~He~~ The person shall then contact the administrator of the training school or detention facility from which the juvenile absconded, who shall be responsible for returning the juvenile to that facility.

(c) A person who takes a juvenile into custody under G.S. 7A-571(b) shall return the juvenile to the custody of the juvenile's parent, guardian, or custodian or notify the parent, guardian, or custodian that the juvenile has been taken into custody unless there are reasonable grounds to believe the juvenile is abused, neglected, or dependent and would be injured if returned to the custody of the parent, guardian, or custodian, in which case the person shall proceed pursuant to G.S. 7A-571(a)(3) and subsection (a) of this section."

Sec. 3. G.S. 122C-421(a) reads as rewritten:

"(a) The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County. These special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named centers. These special police officers shall also have the power prescribed by ~~G.S. 7A-571(4)~~ G.S. 7A-571(a)(4) outside the territory embraced by the named centers but within the confines of Buncombe County. These special police officers may arrest persons outside the territory of the named centers but within the confines of Buncombe County when the person arrested has committed a criminal offense within that territory, for which the officers could have arrested the person within that territory, and the arrest is made during ~~such~~ the person's immediate and continuous flight from that territory."

Sec. 4. This act becomes effective October 1, 1995, and applies to physical custody exercised on or after that date.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

H.B. 832 **CHAPTER 392**

AN ACT TO CLARIFY THE ROLE OF THE WILDLIFE RESOURCES COMMISSION IN THE PROTECTION OF ENDANGERED AND THREATENED WILD ANIMAL SPECIES AND WILD ANIMAL SPECIES OF SPECIAL CONCERN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-333 reads as rewritten:

"§ *113-333. Powers and duties of the Commission.*

(a) In the administration of this Article, the Wildlife Resources Commission shall have the following powers and duties:

(1) To adopt and publish an endangered species list, a threatened species list, and a list of species of special concern, as provided for in G.S. 113-334, identifying each entry by its scientific and common ~~name;~~ name.

(2) To reconsider and revise the lists from time to time in response to public proposals or as the Commission deems ~~necessary;~~ necessary.

(3) To coordinate development and implementation of conservation programs and plans for endangered and threatened species of wild animals and for species of special ~~concern;~~ concern.

(4) To adopt ~~regulations necessary to~~ and implement conservation programs for endangered, threatened, and special concern species and to limit, regulate, or prevent the taking, collection, or sale of protected ~~animals;~~ animals.

(5) To conduct investigations to determine whether a wild animal should be on a protected animal list and to determine the requirements for ~~survival of resident~~ conservation of protected wild animal species.

(b) Using the procedures set out in Article 2A of Chapter 150B of the General Statutes, the Wildlife Resources Commission shall develop a conservation plan for the recovery of protected wild animal species. In developing a conservation plan for a protected wild animal species, the Wildlife Resources Commission shall consider the range of conservation, protection, and management measures that may be applied to benefit the species and its habitat. The conservation plan shall include a comprehensive analysis of all factors that have been identified as causing the decline of the protected wild animal species and all measures that could be taken to restore the species. The analysis shall consider the costs of measures to protect and restore the species and the impact of those measures on the local economy, units of local government, and the use and development of private property. The analysis shall consider reasonably available options for minimizing the

costs and adverse economic impacts of measures to protect and restore the species.

(c) In implementing a conservation plan under this Article, the Wildlife Resources Commission shall not adopt any rule that restricts the use or development of private property. If a conservation plan identifies a conservation, protection, or restoration measure the implementation of which is beyond the scope of the authority of the Wildlife Resources Commission, the Commission may petition the General Assembly, any agency that has regulatory authority to implement the measure, a unit of local government, or any other public or private entity and request the assistance of that agency or entity in implementing the measure."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 15 **CHAPTER 393**

AN ACT TO FURTHER STREAMLINE THE STATUTES SO AS TO CLARIFY THE CONSTITUTIONAL ROLE OF THE STATE BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-5(d) reads as rewritten:

"(d) (1) General. -- The Governor may designate as exempt policymaking positions, as provided below, in each of the following departments:

a. Department of Administration;
b. Department of Commerce;
c. Department of Correction;
d. Department of Crime Control and Public Safety;
e. Department of Cultural Resources;
f. Department of Human Resources;
g. Department of Environment, Health, and Natural Resources;
h. Department of Revenue; and
i. Department of Transportation.

The Secretary of State, the Auditor, the Treasurer, the Attorney General, ~~the Superintendent of Public Instruction,~~ the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate as exempt policymaking positions, as provided below, in their respective offices. The State Board of Education may designate as exempt policymaking positions, as provided below, in the Department of Public Instruction.

(2) Number. -- The number of policymaking positions designated as exempt in each department or office listed in subsection (d)(1), except the Department of Commerce, shall be limited to one and two-tenths percent (1.2%) of the number of full-time positions in the department or office, or 30 positions,

whichever is greater. The Governor may designate 85 policymaking positions as exempt in the Department of Economic and Community Development. Provided, however, that the ~~Governor or~~ Governor, elected department ~~head~~ head, or State Board of Education may request that additional policymaking positions be designated as exempt. The request shall be made by sending a list of policymaking positions that exceed the limit imposed by this subsection to the Speaker of the North Carolina House of Representatives and the President of the North Carolina Senate. A copy of the list also shall be sent to the State Personnel Director. The General Assembly may authorize all, or part of, the additional policymaking positions to be designated as exempt. If the General Assembly is in session when the list is submitted and does not act within 30 days after the list is submitted, the list shall be deemed approved by the General Assembly, and the policymaking positions shall be designated as exempt. If the General Assembly is not in session when the list is submitted, the 30-day period shall not begin to run until the next date that the General Assembly convenes or reconvenes, other than for a special session called for a specific purpose not involving the approval of the list of additional positions to be designated as exempt; the policymaking positions shall not be designated as exempt during the interim.

(3) Letter. -- These positions shall be designated in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate by May 1 of the year in which the oath of office is administered to each Governor unless the provisions of subsection (d)(4) apply.

(4) Vacancies. -- In the event of a vacancy in the Office of Governor or in the office of a member of the Council of State, the person who succeeds to or is appointed or elected to fill the unexpired term shall make such designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to that person. In the event of a vacancy in the Office of Governor, the State Board of Education shall make these designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to the Governor.

(5) Creation, Transfer, or Reorganization. -- The ~~Governor or~~ Governor, elected department ~~head~~ head, or State Board of Education may designate as exempt a policymaking position that is created or transferred to a different department, or is located in a department in which reorganization has occurred, after May 1 of the year in which the oath of office is administered to the Governor. The designation must be made

in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 120 days after such position is created, transferred, or in which reorganization has occurred.

(6) Reversal. -- Subsequent to the designation of a policymaking position as exempt as hereinabove provided, the status of the position may be reversed and made subject to the provisions of this Chapter by the ~~Governor or~~ Governor, by an elected department ~~head~~ head, or by the State Board of Education in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate.

(7) Hearing Officers. -- Except as otherwise specifically provided by this section, no employee, by whatever title, whose primary duties include the power to conduct hearings, take evidence, and enter a decision based on findings of fact and conclusions of law based on statutes and legal precedents shall be designated as exempt. This subdivision shall apply beginning July 1, 1985, and no list submitted after that date shall designate as exempt any employee described in this subdivision."

Sec. 2. Notwithstanding the provisions of G.S. 126-5(d), the State Board of Education may designate as exempt a policymaking position that is located in the Department of Public Instruction on or after the effective date of this act. The designation must be made in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the effective date of this act.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 155 **CHAPTER 394**

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A TEMPORARY LICENSE PLATE THAT IS VALID FOR UP TO SIXTY DAYS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-50(b) reads as rewritten:

"(b) The Division may ~~upon receipt of proper application upon a form supplied by the Division and an accompanying fee of three dollars ($3.00) grant a 10-day~~ issue a temporary ~~registration marker~~ license plate for a vehicle. A temporary license plate is valid for the period set by the Division. The period may not be less than 10 days nor more than 60 days.

A person may obtain a temporary license plate for a vehicle by filing an application with the Division and paying the required fee. An application must be filed on a form provided by the Division.

The fee for a temporary license plate that is valid for 10 days is three dollars ($3.00). The fee for a temporary license plate that is valid for more than 10 days is the amount that would be required with an application for a license plate for the vehicle. If a person obtains for a vehicle a temporary license plate that is valid for more than 10 days and files an application for a license plate for that vehicle before the temporary license plate expires, the person is not required to pay the fee that would otherwise be required for the license plate.

A temporary license plate is subject to the following limitations and conditions:

(1) ~~Temporary 10-day registration markers shall~~ It may be issued only upon proper proof that the applicant has met the applicable financial responsibility requirements.

(2) ~~Temporary 10-day registration markers shall expire 10 days from the date of issuance.~~ It expires on midnight of the day set for expiration.

(3) ~~Temporary 10-day registration markers~~ It may be used only on the vehicle for which issued and may not be transferred, ~~loaned~~ loaned, or assigned to another.

(4) ~~In the event a temporary 10-day registration marker~~ If it is lost or stolen, ~~notice shall be furnished to~~ the person who applied for it must notify the Division.

(5) ~~The Commissioner shall have the power to make such rules and regulations not inconsistent herewith as he shall deem necessary for the purpose of carrying out the provisions of this section.~~ It may not be issued by a dealer.

(6) The provisions of G.S. 20-63, 20-71, 20-110 and 20-111 ~~shall~~ that apply ~~in like manner~~ to license plates apply to temporary ~~10-day registration markers as is applicable to nontemporary plates not by their nature rendered inapplicable.~~ license plates insofar as possible."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 396 **CHAPTER 395**

AN ACT TO ENCOURAGE REGULATED ARRANGEMENTS AMONG PHYSICIANS WHEN THE ARRANGEMENT WILL HELP CONTROL COSTS, IMPROVE ACCESS, IMPROVE QUALITY, OR IMPLEMENT MANDATED HEALTH CARE REFORMS.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as the Physician Cooperation Act of 1995.

Sec. 2. Chapter 90 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 1E.

"Certificate of Public Advantage.

"§ 90-21.24. *Findings.*

The General Assembly of North Carolina makes the following findings:

(1) That technological and scientific developments in health care have enhanced the prospects for further improvement in the quality of care provided to North Carolina citizens.

(2) That the cost of improved technology and improved scientific methods for the provision of health care contributes substantially to the increasing cost of health care. Cost increases make it increasingly difficult for physicians in rural areas of North Carolina to offer care.

(3) That cooperative agreements among physicians, hospitals, and others for the provision of health care services may foster improvements in the quality of health care for North Carolina citizens, moderate increases in cost, and improve access to needed services in rural areas of North Carolina.

(4) That physicians are often in the best position to identify and structure cooperative arrangements that enhance quality of care, improve access, and achieve cost-efficiency in the provision of care.

(5) That federal and State antitrust laws may prohibit or discourage cooperative arrangements that are beneficial to North Carolina citizens, despite their potential for or actual reduction in competition, and that such agreements should be permitted and encouraged.

(6) That competition as currently mandated by federal and State antitrust laws should be supplanted by a regulatory program to permit and encourage cooperative agreements between physicians or between physicians, hospitals, and others, that are beneficial to North Carolina citizens when the benefits of cooperative agreements outweigh their disadvantages caused by their potential or actual adverse effects on competition.

(7) That regulatory as well as judicial oversight of cooperative agreements should be provided to ensure that the benefits of cooperative agreements permitted and encouraged in North Carolina outweigh any disadvantages attributable to any reduction in competition likely to result from the agreements.

"§ 90-21.25. *Definitions.*

As used in this Article, the following terms have the meanings specified:

(1) 'Attorney General' means the Attorney General of the State of North Carolina, or any attorney to whom the Attorney General delegates authority and responsibility to act pursuant to this Article;

(2) 'Cooperative agreement' means an agreement among two or more physicians, or between a physician, hospital, or any other person or persons, for the sharing, allocation, or referral of patients, personnel, instructional programs, support services and facilities, or medical, diagnostic, or laboratory facilities or equipment, or procedures or other services traditionally offered by physicians. Cooperative agreement shall not include any agreement that would

permit self-referrals of patients by a health care provider that is otherwise prohibited by law;

(3) 'Department' means the North Carolina Department of Human Resources;

(4) 'Federal or State antitrust laws' means any and all federal or State laws prohibiting monopolies or agreements in restraint of trade, including, but not limited to, the federal Sherman Act, Clayton Act, and Federal Trade Commission Act, and the North Carolina laws codified in Chapter 75 of the General Statutes;

(5) 'Hospital' means any hospital required to be licensed under Chapter 131E or 122C of the General Statutes;

(6) 'Person' means any individual, firm, partnership, corporation, association, public or private institution, political subdivision, or government agency;

(7) 'Physician' means an individual licensed to practice medicine pursuant to Article 1 of this Chapter.

"§ 90-21.26. *Certificate of public advantage; application.*

(a) A physician and any person who is a party to a cooperative agreement with a physician may negotiate, enter into, and conduct business pursuant to a cooperative agreement without being subject to damages, liability, or scrutiny under any State antitrust law if a certificate of public advantage is issued for the cooperative agreement, or in the case of activities to negotiate or enter into a cooperative agreement, if an application for a certificate of public advantage is filed in good faith. It is the intention of the General Assembly that immunity from federal antitrust laws shall also be conferred by this statute and the State regulatory program that it establishes.

(b) Parties to a cooperative agreement may apply to the Department for a certificate of public advantage governing that cooperative agreement. The application must include an executed written copy of the cooperative agreement or letter of intent with respect to the agreement, a description of the nature and scope of the activities and cooperation in the agreement, any consideration passing to any party under the agreement, and any additional materials necessary to fully explain the agreement and its likely effects. A copy of the application and all additional related materials shall be submitted to the Attorney General at the same time the application is made to the Department.

"§ 90-21.27. *Procedure for review; standards for review.*

(a) The Department shall review the application in accordance with the standards set forth in subsection (b) of this section and shall hold a public hearing with the opportunity for the submission of oral and written public comments in accordance with rules adopted by the Department. The Department shall determine whether the application should be granted or denied within 90 days of the date of filing of an application. Provided, however, that the Department may extend the review period for a specified period of time upon notice to the parties.

(b) The Department shall determine that a certificate of public advantage should be issued for a cooperative agreement, if it determines that the applicant has demonstrated by clear and convincing evidence that the benefits

likely to result from the agreement outweigh the disadvantages likely to result from a reduction in competition from the agreement.

In evaluating the potential benefits of a cooperative agreement, the Department shall consider whether one or more of the following benefits may result from the cooperative agreement:

(1) Enhancement of the quality of health care provided to North Carolina citizens;

(2) Preservation of other health care facilities in geographical proximity to the communities traditionally served by those facilities;

(3) Lower costs of, or gains in the efficiency of delivering, health care services;

(4) Improvements in the utilization of health care resources and equipment;

(5) Avoidance of duplication of health care resources; and

(6) The extent to which medically underserved populations are expected to utilize the proposed services.

In evaluating the potential disadvantages of a cooperative agreement, the Department shall consider whether one or more of the following disadvantages may result from the cooperative agreement:

(1) The extent to which the agreement may increase the costs or prices of health care at the locations of parties to the cooperative agreement;

(2) The extent to which the agreement may have an adverse impact on patients in the quality, availability, and price of health care services;

(3) The extent to which the agreement may reduce competition among the parties to the agreement and the likely effects thereof;

(4) The extent to which the agreement may have an adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care service agents, or other health care payors to negotiate optimal payment and service arrangements with hospitals, physicians, allied health care professionals, or other health care providers;

(5) The extent to which the agreement may result in a reduction in competition among physicians, allied health professionals, other health care providers, or other persons furnishing health care services; and

(6) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition.

In making its determination, the Department may consider other benefits or disadvantages that may be identified.

"§ 90-21.28. *Issuance of a certificate.*

If the Department determines that the likely benefits of a cooperative agreement outweigh the likely disadvantages attributable to reduction of competition as a result of the agreement by clear and convincing evidence, and the Attorney General has not stated any objection to issuance of a

certificate during the review period, the Department shall issue a certificate of public advantage for the cooperative agreement at the conclusion of the review period. Such certificate shall include any conditions of operation under the agreement that the Department, in consultation with the Attorney General, determines to be appropriate in order to ensure that the cooperative agreement and activities engaged in pursuant thereto are consistent with this Article and its purpose to limit health care costs. The Department shall include conditions to control prices of health care services provided under the cooperative agreement. Consideration shall be given to assure that access to health care is provided to all areas of the State. The Department shall publish its decisions on applications for certificates of public advantage in the North Carolina Register.

"§ 90-21.29. *Objection by Attorney General.*

If the Attorney General is not persuaded that the applicant has demonstrated by clear and convincing evidence that the benefits likely to result from the agreement outweigh the likely disadvantages of any reduction of competition to result from the agreement as set forth in G.S. 90-21.27, the Attorney General may, within the review period, state an objection to the issuance of a certificate of public advantage and may extend the review period for a specified period of time. Notice of the objection and any extension of the review period shall be provided in writing to the applicant, together with a general explanation of the concerns of the Attorney General. The parties may attempt to reach agreement with the Attorney General on modifications to the agreement or to conditions in the certificate so that the Attorney General no longer objects to issuance of a certificate. If the Attorney General withdraws the objection and the Department maintains its determination that a certificate should be issued, the Department shall issue a certificate of public advantage with any appropriate conditions as soon as practicable following withdrawal of the objection. If the Attorney General does not withdraw the objection, a certificate shall not be issued.

"§ 90-21.30. *Record keeping.*

The Department shall maintain on file all cooperative agreements for which certificates of public advantage are in effect and a copy of the certificate, including any conditions imposed. Any party to a cooperative agreement who terminates an agreement shall file a notice of termination with the Department within 30 days after termination. These files shall be public records as set forth in Chapter 132 of the General Statutes.

"§ 90-21.31. *Review after issuance of certificate.*

If at any time following the issuance of a certificate of public advantage, the Department or the Attorney General has questions concerning whether the parties to the cooperative agreement have complied with any condition of the certificate or whether the benefits or likely benefits resulting from a cooperative agreement may no longer outweigh the disadvantages or likely disadvantages attributable to a reduction in competition resulting from the agreement, the Department or the Attorney General shall advise the parties to the agreement and either the Department or the Attorney General shall request any information necessary to complete a review of the matter.

"§ 90-21.32. *Periodic reports.*

(a) During the time that a certificate is in effect, a report of activities pursuant to the cooperative agreement must be filed every two years with the Department on or by the anniversary day on which the certificate was issued. A copy of the periodic report shall be submitted to the Attorney General at the same time it is filed with the Department. A report shall include all of the following:

(1) A description of the activities conducted pursuant to the agreement.

(2) Price and cost information.

(3) The nature and scope of the activities pursuant to the agreement anticipated for the next two years and the likely effect of those activities.

(4) A signed certificate by each party to the agreement that the benefits or likely benefits of the cooperative agreement as conditioned continue to outweigh the disadvantages or likely disadvantages of any reduction in competition from the agreement as conditioned.

(5) Any additional information requested by the Department or the Attorney General.

The Department shall give public notice in the North Carolina Register that a report has been received. After notice is given, the public shall have 30 days to file written comments on the report and on the benefits and disadvantages of continuing the certificate of public advantage. Periodic reports, public comments, and information submitted in response to a request shall be public records as set forth in Chapter 132 of the General Statutes.

(b) Failure to file a periodic report required by this section after notice of default, or failure to provide information requested pursuant to a review under G.S. 90-21.31 are grounds for revocation of the certificate by the Attorney General or the Department.

(c) The Department shall review each periodic report, public comments, and information submitted in response to a request under G.S. 90-21.31 to determine whether the advantages or likely advantages of the cooperative agreement continue to outweigh the disadvantages or likely disadvantages of any reduction in competition from the agreement, and to determine what, if any, changes in the conditions of the certificate should be made. In the review the Department shall consider the benefits and disadvantages set forth in G.S. 90-21.27. Within 60 days of the filing of a periodic report, the Department shall determine whether the certificate should remain in effect and whether any changes to the conditions in the certificate should be made. Provided, however, that the Department may extend the review period an additional 30 days. If the Department or Attorney General determines that the parties to the cooperative agreement have not complied with any condition of the certificate, the Department or the Attorney General shall revoke the certificate and the parties shall be notified. If the certificate is revoked, the parties shall be entitled to no benefits under this Article, beginning on the date of revocation. If the Department determines that the certificate should remain in effect and the Attorney General has not stated any objection to the certificate remaining in effect during the review period, the certificate shall remain in effect subject to any changes in the conditions of the certificate imposed by the Department. The parties shall be notified

in writing of the Department's decision and of any changes in the conditions of the certificate. The Department shall publish its decision and any changes in the conditions in the North Carolina Register.

If the Department determines that the benefits or likely benefits of the agreement and the unavoidable costs of terminating the agreement do not continue to outweigh the disadvantages or likely disadvantages of any reduction in competition from the agreement, or if the Attorney General objects to the certificate remaining in effect based upon a review of the benefits and disadvantages set forth in G.S. 90-21.27, the Department shall notify the parties to the agreement in writing of its determination or the objections of the Attorney General and shall provide a summary of any concerns of the Department or Attorney General to the parties.

"§ 90-21.33. *Right to judicial action.*

(a) Any applicant or other person aggrieved by a decision to issue or not issue a certificate of public advantage is entitled to judicial review of the action or inaction in superior court. Suit for judicial review under this subsection shall be filed within 30 days of public notice of the decision to issue or deny issuance of the certificate. To prevail in any action for judicial review brought under this subsection, the plaintiff or petitioner must establish that the determination by the Department or the Attorney General was arbitrary or capricious.

(b) Any party or other person aggrieved by a decision to allow the certificate to remain in effect or to make changes in the conditions of the certificate is entitled to judicial review of the decision in superior court. Suit for judicial review under this subsection shall be filed within 30 days of public notice of the decision to allow the certificate to remain in effect or to make changes in the conditions of the certificate. To prevail in any action for judicial review brought under this subsection, the plaintiff or petitioner must establish that the determination by the Department or the Attorney General was arbitrary or capricious.

(c) If the Department or the Attorney General determines the certificate should not remain in effect, the Attorney General may bring suit in the Superior Court of Wake County on behalf of the Department or on its own behalf to seek an order to authorize the cancellation of the certificate. To prevail in the action, the Attorney General must establish that the benefits resulting from the agreement are outweighed by the disadvantages attributable to reduction in competition resulting from the agreement.

(d) In any action instituted under this section, the work product of the Department or the Attorney General or his staff is not a public record under Chapter 132 of the General Statutes and shall not be discoverable or admissible, nor shall the Attorney General or any member of the Attorney General's staff be compelled to be a witness, whether in discovery or at any hearing or trial.

"§ 90-21.34. *Fees for applications and periodic reports.*

(a) The Department and the Attorney General shall establish and collect administrative fees for filing of an application for a certificate of public advantage based on the total cost of the project for which the application is made, in an amount not to exceed fifteen thousand dollars ($15,000), and an administrative fee for filing each periodic report required to be filed in an

amount not to exceed two thousand five hundred dollars ($2,500). The fee schedule established should generate sufficient revenue to offset the costs of the program. An application filing fee must be paid to the Department at the time an application for a certificate of public advantage is submitted pursuant to G.S. 90-21.26. A periodic report filing fee must be paid to the Department at the time a periodic report is submitted to it pursuant to G.S. 90-21.32.

(b) If the Department or the Attorney General determines that consultants are needed to complete a review of an application, an additional application fee may be established by prior agreement with the applicants before the application is considered. The amount of the additional fee may not exceed the costs of contracting with the necessary consultants. The additional fee shall not be considered in determining whether an application fee exceeds the maximum application fee amount set in subsection (a) of this section.

"*§ 90-21.35. Department and Attorney General authority.*

The Department and Attorney General shall adopt rules to conduct review of applications for certificates of public advantage and of periodic reports filed in connection therewith and to bring actions in the Superior Court of Wake County as required under G.S. 90-21.33. This Article shall not limit the authority of the Attorney General under federal or State antitrust laws.

"*§ 90-21.36. Effects of certificate of public advantage; other laws.*

(a) Activities conducted pursuant to a cooperative agreement for which a certificate of public advantage has been issued are immunized from challenge or scrutiny under State antitrust laws. In addition, conduct in negotiating and entering into a cooperative agreement for which an application for a certificate of public advantage is filed in good faith shall be immune from challenge or scrutiny under State antitrust laws, regardless of whether a certificate is issued. It is the intention of the General Assembly that this Article shall also immunize covered activities from challenge or scrutiny under any noncompetition provisions of the federal antitrust law.

(b) Nothing in this Article shall exempt physicians or others from compliance with State or federal laws governing certificate of need, licensure, or other regulatory requirements.

(c) Any dispute among the parties to cooperative agreement concerning its meaning or terms is governed by normal principles of contract law."

Sec. 3. The Department of Human Resources shall report to the 1999 General Assembly a summary and analysis of the effects of this act, including the results of efforts to assure access to health care and to control increases in health care costs and recommendations, if any, for amendments to this act.

Sec. 4. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 478 **CHAPTER 396**

AN ACT TO COORDINATE ENFORCEMENT OF FEDERAL NURSING HOME REQUIREMENTS WITH STATE REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-129 is amended by adding a new subsection to read:

"(h) The Department shall not assess an administrative penalty against a facility under this section if a civil monetary penalty has been assessed for the same violation under federal enforcement laws and regulations."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

H.B. 85 **CHAPTER 397**

AN ACT TO PROVIDE THAT NONPROFIT BARBER SCHOOLS HAVE ONE INSTRUCTOR FOR EVERY TWENTY STUDENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 86A-22(2) reads as rewritten:

"(2)(i) Each school shall have at least two ~~instructors.~~ instructors, except that schools that are nonprofit educational institutions with a curriculum and continuing education support system established with a State university or community college shall have at least one instructor for every 20 enrolled students, provided the one instructor may not conduct classroom lectures and study periods, or lectures and demonstrations on practical work, during the same time the one instructor is providing students with supervised practice in barbering. Each instructor must hold a valid instructor's certificate issued by the Board. (ii) Programs established in post-secondary institutions shall be authorized only after they have been evaluated through the academic program approval processes as established by the respective governing boards. The boards, in evaluating instructional and fiscal resources included in the documents submitted requesting authority to offer programs in barbering, shall determine that standards are in place to ensure that programs established remain in compliance with appropriate accreditation agencies."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

H.B. 90 **CHAPTER 398**

AN ACT TO PROVIDE THAT A PERSON WHO MEETS SPECIFIED STATUTORY CRITERIA MAY CARRY A CONCEALED HANDGUN IF THE PERSON HAS OBTAINED A CONCEALED HANDGUN PERMIT, TO AUTHORIZE SHERIFFS TO ISSUE CONCEALED HANDGUN PERMITS, TO ESTABLISH THE CRITERIA THAT MUST BE SATISFIED TO RECEIVE THE PERMIT, TO ESTABLISH THE PROCEDURE FOR THE ISSUANCE OF A CONCEALED

HANDGUN PERMIT, TO INCREASE THE PENALTY FOR CARRYING A CONCEALED HANDGUN WITHOUT A PERMIT, AND TO MAKE CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 54B.

"Concealed Handgun Permit.

"*§ 14-415.10. Definitions.*

The following definitions apply to this Article:

(1) Carry a concealed handgun. -- The term includes possession of a concealed handgun.

(2) Handgun. -- A firearm that has a short stock and is designed to be held and fired by the use of a single hand.

(3) Permit. -- A concealed handgun permit issued in accordance with the provisions of this Article.

"*§ 14-415.11. Permit to carry concealed handgun; scope of permit.*

(a) Any person who has a concealed handgun permit may carry a concealed handgun unless otherwise specifically prohibited by law. The person shall carry the permit together with valid identification whenever the person is carrying a concealed handgun, shall disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun when approached or addressed by the officer, and shall display both the permit and the proper identification upon the request of a law enforcement officer.

(b) The sheriff shall issue a permit to carry a concealed handgun to a person who qualifies for a permit under G.S. 14-415.12. The permit shall be valid throughout the State for a period of three years from the date of issuance.

(c) A permit does not authorize a person to carry a concealed handgun in the areas prohibited by G.S. 14-269.2, 14-269.3, 14-269.4, and 14-277.2, in any area prohibited by 18 U.S.C. § 922 or any other federal law, in a law enforcement or correctional facility, in a building housing only State or federal offices, in an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government, a financial institution, or any other premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises. It shall be unlawful for a person, with or without a permit, to carry a concealed handgun while consuming alcohol or at any time while the person has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in his blood was lawfully obtained and taken in therapeutically appropriate amounts.

(d) A person who is issued a permit shall notify the sheriff who issued the permit of any change in the person's permanent address within 30 days after the change of address. If a permit is lost or destroyed, the person to whom the permit was issued shall notify the sheriff who issued the permit of

the loss or destruction of the permit. A person may obtain a duplicate permit by submitting to the sheriff a notarized statement that the permit was lost or destroyed and paying the required duplicate permit fee.

"§ 14-415.12. *Criteria to qualify for the issuance of a permit.*

(a) The sheriff shall issue a permit to an applicant if the applicant qualifies under the following criteria:

(1) The applicant is a citizen of the United States and has been a resident of the State 30 days or longer immediately preceding the filing of the application.

(2) The applicant is 21 years of age or older.

(3) The applicant does not suffer from a physical or mental infirmity that prevents the safe handling of a handgun.

(4) The applicant has successfully completed an approved firearms safety and training course which involves the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force. The North Carolina Criminal Justice Education and Training Standards Commission shall prepare and publish general guidelines for courses and qualifications of instructors which would satisfy the requirements of this subdivision. An approved course shall be any course which satisfies the requirements of this subdivision and is certified or sponsored by:

a. The North Carolina Criminal Justice Education and Training Standards Commission,

b. The National Rifle Association, or

c. A law enforcement agency, college, private or public institution or organization, or firearms training school, taught by instructors certified by the North Carolina Criminal Justice Education and Training Standards Commission or the National Rifle Association.

Every instructor of an approved course shall file a copy of the firearms course description, outline, and proof of certification annually, or upon modification of the course if more frequently, with the North Carolina Criminal Justice Education and Training Standards Commission.

(5) The applicant is not disqualified under subsection (b) of this section.

(b) The sheriff shall deny a permit to an applicant who:

(1) Is ineligible to own, possess, or receive a firearm under the provisions of State or federal law.

(2) Has formal charges pending for a crime punishable by imprisonment for a term exceeding sixty days.

(3) Has been adjudicated guilty in any court of a crime punishable by imprisonment for a term exceeding sixty days.

(4) Is a fugitive from justice.

(5) Is an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. § 802.

(6) Is currently, or has been previously adjudicated or administratively determined to be, lacking mental capacity or mentally ill.

(7) Is or has been discharged from the armed forces under conditions other than honorable.

(8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3, 14-281.1, 14-283, 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, 14-288.12, 14-288.13, 14-288.14, 14-318.2, or 14-415.19(a), unless five years has elapsed since disposition or pardon has occurred prior to the date on which the application is submitted.

(9) Has had entry of a prayer for judgment continued for a criminal offense which would disqualify the person from obtaining a concealed handgun permit.

(10) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime which would disqualify him from obtaining a concealed handgun permit.

(11) Has been convicted of an impaired driving offense under G.S. 20-138.1, 20-138.2, or 20-138.3 within three years prior to the date on which the application is submitted.

"§ *14-415.13. Application for a permit; fingerprints.*

(a) A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit. The applicant shall submit to the sheriff all of the following:

(1) An application, completed under oath, on a form provided by the sheriff.

(2) A nonrefundable permit fee.

(3) A full set of fingerprints of the applicant administered by a law enforcement agency of this State.

(4) An original certificate of completion of an approved course, adopted and distributed by the North Carolina Criminal Justice Education and Training Standards Commission, signed by the certified instructor of the course attesting to the successful completion of the course by the applicant which shall verify that the applicant is competent with a handgun and knowledgeable about the laws governing the carrying of a concealed handgun and the use of deadly force.

(5) A release, in a form to be prescribed by the Administrative Office of the Courts, that authorizes and requires disclosure to the sheriff of any records concerning the mental health or capacity of the applicant.

(b) The sheriff shall submit the fingerprints to the State Bureau of Investigation for a records check of State and national databases. The State

Bureau of Investigation shall submit the fingerprints to the Federal Bureau of Investigation as necessary. The cost of processing the set of fingerprints shall be charged to an applicant as provided by G.S. 14-415.19. The fingerprints of an applicant who is issued a permit shall be retained for future use in the event the permit is renewed, and shall be retained until any valid permit expires and is not renewed.

"*§ 14-415.14. Application form to be provided by sheriff; information to be included in application form.*

(a) The sheriff shall make permit applications readily available at the office of the sheriff or at other public offices in the sheriff's jurisdiction. The permit application shall be in triplicate, in a form to be prescribed by the Administrative Office of the Courts, and shall include the following information with regard to the applicant: name, address, physical description, signature, date of birth, social security number, military status, and the drivers license number or State identification card number of the applicant if used for identification in applying for the permit.

(b) The permit application shall also contain a warning substantially as follows:

'CAUTION: Federal law and State law on the possession of handguns and firearms differ. If you are prohibited by federal law from possessing a handgun or a firearm, you may be prosecuted in federal court. A State permit is not a defense to a federal prosecution.'

"*§ 14-415.15. Issuance or denial of permit.*

(a) Except as permitted under subsection (b) of this section, within 90 days after receipt of the items listed in G.S. 14-415.13 from an applicant, the sheriff shall either issue or deny the permit. The sheriff may conduct any investigation necessary to determine the qualification or competency of the person applying for the permit, including record checks.

(b) Upon presentment to the sheriff of the items required under G.S. 14-415.13(a)(1), (2), and (3), the sheriff may issue a temporary permit for a period not to exceed 90 days to a person who the sheriff reasonably believes is in an emergency situation that may constitute a risk of safety to the person, the person's family or property. The temporary permit may not be renewed and may be revoked by the sheriff without a hearing.

(c) A person's application for a permit shall be denied only if the applicant fails to qualify under the criteria listed in this Article. If the sheriff denies the application for a permit, the sheriff shall, within 90 days, notify the applicant in writing, stating the grounds for denial. An applicant may appeal the denial, revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the application was filed. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal. The determination by the court shall be final.

"*§ 14-415.16. Renewal of permit.*

The holder of a permit shall apply to renew the permit at least 30 days prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, a notarized affidavit stating that the permittee remains qualified under the criteria provided in this Article, and a renewal fee. Upon receipt of the

completed renewal application and appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within 30 days of its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the permit.

"§ *14-415.17. Permit; sheriff to retain and make available to law enforcement agencies a list of permittees.*

The permit shall be in a certificate form, as prescribed by the Administrative Office of the Courts, that is approximately the size of a North Carolina drivers license. It shall bear the signature, name, address, date of birth, and social security number of the permittee, and the drivers license identification number used in applying for the permit. The sheriff shall maintain a listing of those persons who are issued a permit and any pertinent information regarding the issued permit. The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the sheriff shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system.

"§ *14-415.18. Revocation or suspension of permit.*

(a) The sheriff of the county where the permit was issued or the sheriff of the county where the person resides may revoke a permit subsequent to a hearing for any of the following reasons:

(1) Fraud or intentional or material misrepresentation in the obtaining of a permit.

(2) Misuse of a permit, including lending or giving a permit to another person, duplicating a permit, or using a permit with the intent to unlawfully cause harm to a person or property.

(3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.

(4) The violation of any of the terms of this Article.

(5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.

A permittee may appeal the revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the applicant resides. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal.

(b) The court may suspend a permit as part of and for the duration of any orders permitted under Chapter 50B of the General Statutes.

"§ *14-415.19. Fees.*

(a) The permit fees assessed under this Article are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer to be used to pay the costs of the criminal record checks and investigations required under this Article. The permit fees are as follows:

Application fee $50.00

Renewal fee $50.00
Duplicate permit fee $15.00

(b) An additional fee, not to exceed ten dollars ($10.00), shall be collected from an applicant for a permit to pay for the costs of processing the applicant's fingerprints. This fee shall be retained by the law enforcement office that processes the fingerprints.

"§ 14-415.20. *No liability of sheriff.*

A sheriff who issues or refuses to issue a permit to carry a concealed handgun under this Article shall not incur any civil or criminal liability as the result of the performance of the sheriff's duties under this Article.

"§ 14-415.21. *Violations of this Article punishable as an infraction and a Class 2 misdemeanor.*

(a) A person who has been issued a valid permit who is found to be carrying a concealed handgun without the permit in the person's possession or who fails to disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun, as required by G.S. 14-415.11, shall be guilty of an infraction for the first offense and shall be punished in accordance with G.S. 14-3.1. In lieu of paying a fine for the first offense, the person may surrender the permit. Subsequent offenses for failing to carry a valid permit or for failing to make the necessary disclosures to a law enforcement officer as required by G.S. 14-415.11 shall be punished in accordance with subsection (b) of this section.

(b) A person who violates the provisions of this Article other than as set forth in subsection (a) of this section is guilty of a Class 2 misdemeanor.

"§ 14-415.22. *Construction of Article.*

This Article shall not be construed to require a person who may carry a concealed handgun under the provisions of G.S. 14-269(b) to obtain a concealed handgun permit.

"§ 14-415.23. *Statewide uniformity.*

It is the intent of the General Assembly to prescribe a uniform system for the regulation of legally carrying a concealed handgun. To insure uniformity, no political subdivisions, boards, or agencies of the State nor any county, city, municipality, municipal corporation, town, township, village, nor any department or agency thereof, may enact ordinances, rules, or regulations concerning legally carrying a concealed handgun. A unit of local government may adopt an ordinance to permit the posting of a prohibition against carrying a concealed handgun, in accordance with G.S. 14-415.11(c), on local government buildings, their appurtenant premises, and parks."

Sec. 2. G.S. 14-269 reads as rewritten:

"§ 14-269. *Carrying concealed weapons.*

(a) It shall be unlawful for any ~~person, except when on his own premises,~~ person willfully and intentionally to carry concealed about his person any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, ~~pistol, gun~~ or other deadly weapon of like ~~kind,~~ kind, except when the person is on the person's own premises. ~~This section does not apply to an ordinary pocket knife carried in a closed position. As used in this section, 'ordinary pocket knife' means a small knife, designed for carrying in a pocket or purse, which has its cutting edge~~

~~and point entirely enclosed by its handle, and that may not be opened by a throwing, explosive or spring action.~~

(a1) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any pistol or gun except in the following circumstances:

(1) The person is on the person's own premises.

(2) The deadly weapon is a handgun, and the person has a concealed handgun permit issued in accordance with Article 54B of this Chapter.

(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) Civil officers of the United States while in the discharge of their official duties;

(3) Officers and soldiers of the militia and the national guard when called into actual service;

(4) Officers of the State, or of any county, city, or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties;

(5) ~~Full-time sworn~~ Sworn law-enforcement officers, when ~~off-duty, in the jurisdiction where they are assigned,~~ off-duty, if:

a. Written regulations authorizing the carrying of concealed weapons have been filed with the clerk of court in the county where the law-enforcement unit is located by the sheriff or chief of police or other superior officer in charge; and

b. Such regulations specifically prohibit the carrying of concealed weapons while the officer is consuming or under the influence of alcoholic beverages.

(b1) It is a defense to a prosecution under this section that:

(1) The weapon was not a firearm;

(2) The defendant was engaged in, or on the way to or from, an activity in which he legitimately used the weapon;

(3) The defendant possessed the weapon for that legitimate use; and

(4) The defendant did not use or attempt to use the weapon for an illegal purpose.

The burden of proving this defense is on the defendant.

(c) Any person violating the provisions of ~~this section~~ subsection (a) of this section shall be guilty of a Class 2 misdemeanor. Any person violating the provisions of subsection (a1) of this section shall be guilty of a Class 2 misdemeanor for the first offense. A second or subsequent offense is punishable as a Class I felony.

(d) This section does not apply to an ordinary pocket knife carried in a closed position. As used in this section, 'ordinary pocket knife' means a small knife, designed for carrying in a pocket or purse, that has its cutting edge and point entirely enclosed by its handle, and that may not be opened by a throwing, explosive, or spring action."

Sec. 3. This act becomes effective December 1, 1995, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

H.B. 537 **CHAPTER 399**

AN ACT TO ALLOW GASTON AND GREENE COUNTIES TO ACQUIRE AND OTHERWISE MAKE AVAILABLE PROPERTY FOR USE BY THE BOARD OF TRUSTEES OF A COMMUNITY COLLEGE WITHIN THE COUNTY AND TO VALIDATE CERTAIN GREENE COUNTY EXPENDITURES FOR A FACILITY FOR JOINT COMMUNITY COLLEGE AND PUBLIC SCHOOL USE.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 613 of the 1993 Session Laws reads as rewritten:

"Sec. 3. This act applies only to Gaston, Greene, and Sampson ~~County.~~ Counties."

Sec. 2. G.S. 153A-158, as amended by Chapter 613 of the 1993 Session Laws, reads as rewritten:

"*§ 153A-158. Power to acquire property.*

(a) Acquisition. -- A county may acquire, by ~~gift, grant, devise, bequest, exchange,~~ purchase, lease, or any other lawful method, ~~the fee or any lesser~~ any interest in real or personal property for use by the county or any department, board, commission, or agency of the county or a community college within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A.

(b) Construction; Disposition. -- A county may construct, equip, expand, improve, renovate, repair, or otherwise make available property for use by a community college within the county and may lease, sell, or otherwise dispose of property for use by a community college within the county for any price and on any terms negotiated by the board of county commissioners and the board of trustees of the community college.

(c) Public Hearing. -- ~~The county shall~~ A county may use its authority under this section to acquire ~~the fee or any lesser~~ an interest in real or personal property for use by a community college within the county only upon request of the board of trustees of the community college for which property is to be made available. The board of county commissioners shall hold a public hearing prior to final action. ~~and after a public hearing by the board of county commissioners.~~ A notice of the public hearing shall be published at least once at least 10 days before the date fixed for the hearing. ~~A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a community college within the county.~~"

Sec. 3. Section 2 of Chapter 613 of the 1993 Session Laws reads as rewritten:

"Sec. 2. Disposition, Acquisition, and Construction by Community College. -- Notwithstanding the provisions of G.S. ~~115D-15 and G.S.~~ 115D-14, 115D-15, and 160A-274, the board of trustees of a community college ~~may lease or sell~~ may, in connection with additions, improvements, renovations, or repairs to all or part of the property, lease, sell, or otherwise

dispose of any of its property to the county in which the property is located for any price and on any terms negotiated between the two ~~boards, subject to prior approval by the State Board of Community Colleges.~~ boards. ~~A community college may lease or sell property pursuant to this section only in connection with additions, improvements, renovations, or repairs to all or part of the property.~~ Notwithstanding the provisions of G.S. 115D-14 and G.S. 115D-20(3), the board of trustees of a community college also may acquire, by any lawful method, any interest in real or personal property for use by the board of trustees from the county in which the community college is located and may contract for the construction, equipping, expansion, improvement, renovation, repair, or otherwise making available for use by the board of trustees of all or part of the property upon any terms negotiated by the two boards.

The actions of a board of trustees of a community college taken pursuant to this section are subject to the approval of the State Board of Community Colleges to the extent this approval is required by law."

Sec. 4. Chapter 613 of the 1993 Session Laws is amended by adding a new section to read:

"Sec. 2.1. Contract Responsibility. -- A county's obligations under a contract entered into by the county on behalf of a community college within the county shall be the responsibility of the county and not the responsibility of the board of trustees of the community college."

Sec. 5. For the purposes of G.S. 105-487, 105-502, 105-503, and 115C-546.2, the term "public school capital outlay" includes capital expenditures by Greene County for an auditorium to be used jointly by the public schools and by Lenoir Community College.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 242 **CHAPTER 400**

AN ACT TO AMEND THE NORTH CAROLINA NONPROFIT CORPORATION ACT AND TO MAKE A CONFORMING AMENDMENT TO THE BUSINESS CORPORATION ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55A-5-01 reads as rewritten:

"*§ 55A-5-01. Registered office and registered agent.*

(a) Each corporation shall continuously maintain in this State:

(1) A registered office that may be the same as any place where it conducts affairs; and

(2) A registered agent, who shall be:

a. An individual who resides in this State and whose office is identical with the registered office;

b. A domestic business or nonprofit corporation whose office is identical with the registered office; or

c. A foreign business or nonprofit corporation authorized to transact business or conduct affairs in this State whose office is identical with the registered office.

(b) The sole duty of the registered agent to the corporation is to forward to the corporation at its last known address any notice, process, or demand that is served on the registered agent."

Sec. 2. G.S. 55A-7-21(c) reads as rewritten:

"(c) ~~A bylaw amendment~~ An amendment to the articles of incorporation or bylaws on which members are entitled to vote, the purpose of which is to increase or decrease the number of votes any member is entitled to cast on any member ~~action~~ action, shall be approved by the members entitled to vote on that ~~action.~~ action by a vote that would be sufficient to take the action before the amendment."

Sec. 3. G.S. 55A-7-23(b) reads as rewritten:

"(b) ~~A bylaw amendment~~ An amendment to the articles of incorporation or bylaws on which members are entitled to vote, the purpose of which is to increase or decrease the vote required for any member ~~action~~ action, shall be approved by the members entitled to vote on that ~~action.~~ action by a vote that would be sufficient to take the action before the amendment."

Sec. 4. G.S. 55A-10-03(a) reads as rewritten:

"(a) If the corporation has members entitled to vote thereon, then, unless this Chapter, the articles of incorporation, bylaws, the members (acting pursuant to subsection (b) of this section), or the board of directors (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, an amendment to a corporation's articles of incorporation to be adopted shall be approved:

(1) By the board or in lieu thereof in writing by the number or proportion of members entitled under G.S. 55A-7-02(a)(2) to call a special meeting to consider such amendment;

(2) By the members ~~by~~ entitled to vote thereon by two-thirds of the votes cast or a majority of the votes entitled to be cast on the ~~amendment;~~ amendment, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles of incorporation authorized by G.S. 55A-10-30."

Sec. 5. G.S. 55A-11-01(a) reads as rewritten:

"(a) Subject to the limitations set forth in G.S. 55A-11-02, one or more nonprofit corporations may merge into ~~a business or~~ another nonprofit corporation, if the plan of merger is approved as provided in G.S. 55A-11-03."

Sec. 6. G.S. 55A-11-02(a)(4) reads as rewritten:

"(4) A business or nonprofit corporation other than a charitable or religious corporation, provided that: (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the charitable or religious corporation or the fair market value of the charitable or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have

received its assets under ~~G.S. 55A-14-06(a)(5) and (6)~~ G.S. 55A-14-03(a)(1) and (2) had it dissolved; (ii) it shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and (iii) the merger is approved by a majority of directors of the charitable or religious corporation who are not and will not become members or shareholders in or directors, officers, employees, agents, or consultants of the surviving corporation."

Sec. 7. G.S. 55A-11-06(a) reads as rewritten:

"(a) Except as provided in G.S. 55A-11-02, one or more foreign ~~business or~~ nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(1) The merger is permitted by the law of the state or ~~county~~ country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) The foreign corporation complies with G.S. 55A-11-04 if it is the surviving corporation of the merger; and

(3) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving corporation of the merger, with G.S. 55A-11-04."

Sec. 8. Article 11 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"*§ 55A-11-08. Merger with business corporation.*

(a) One or more domestic or foreign business corporations may merge with one or more domestic nonprofit corporations if:

(1) Each domestic business corporation complies with the applicable provisions of G.S. 55-11-01, 55-11-03, and 55-11-04;

(2) In a merger involving one or more foreign business corporations, the merger is permitted by the law of the state or country under whose law each foreign business corporation is incorporated and each foreign business corporation complies with that law in effecting the merger;

(3) The domestic or foreign business corporation complies with G.S. 55A-11-04 if it is the surviving corporation; and

(4) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving corporation, with G.S. 55A-11-04.

(b) Upon the merger taking effect, if the surviving corporation does not have a registered agent in this State, it shall be deemed to have appointed the Secretary of State as its registered agent for service of process in a proceeding to enforce any obligation of a domestic nonprofit corporation party to the merger, until such time as it appoints a registered agent in this State.

(c) This section does not limit the power of a domestic or foreign business corporation to acquire all or part of the memberships of one or more classes of a domestic nonprofit corporation through a voluntary exchange or otherwise."

Sec. 9. G.S. 55A-15-20(c) reads as rewritten:

"(c) If the Secretary of State finds that the application conforms to law, the Secretary of State shall:

(1) Endorse on the application and an exact or conformed copy thereof the word 'filed', and the hour, day, month, and year of the filing thereof;

(2) File the application in the Secretary of State's office; ~~and~~

(3) Issue a certificate of withdrawal to which the Secretary of State shall affix the exact or conformed copy of the ~~application.~~ application; and

(4) Send to the foreign corporation or its representative the certificate of withdrawal together with the exact or conformed copy of the application affixed thereto."

Sec. 10. G.S. 55A-15-31 is amended by adding the following new subsection to read:

"(f) The corporation shall not be granted a new certificate of authority until each ground for revocation has been substantially corrected to the reasonable satisfaction of the Secretary of State."

Sec. 11. Article 15 of Chapter 55A of the General Statutes is amended by adding the following new section to read:

"*§ 55A-15-33. Inapplicability of Administrative Procedure Act.*

The Administrative Procedure Act shall not apply to any proceeding or appeal provided for in G.S. 55A-15-30 through G.S. 55A-15-32."

Sec. 12. G.S. 55A-17-01(b) reads as rewritten:

"(b) The provisions of this Chapter relating to foreign corporations shall apply to all ~~such~~ corporations conducting affairs in this State for purposes for which a corporation might be organized under this Chapter. A foreign corporation authorized to conduct affairs in this State on July 1, 1994, is subject to this Chapter but is not required to obtain a new certificate of authority to conduct affairs under this Chapter."

Sec. 13. Article 11 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"*§ 55-11-09. Merger with nonprofit corporation.*

(a) One or more domestic or foreign nonprofit corporations may merge with one or more domestic corporations if:

(1) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03;

(2) In a merger involving one or more foreign nonprofit corporations, the merger is permitted by law of the state or country under whose law each foreign nonprofit corporation is incorporated and each foreign nonprofit corporation complies with that law in effecting the merger;

(3) The domestic or foreign nonprofit corporation complies with G.S. 55-11-05 if it is the surviving corporation; and

(4) Each domestic corporation complies with the applicable provisions of G.S. 55-11-01, 55-11-03, and 55-11-04 and, if it is the surviving corporation, with G.S. 55-11-05.

(b) Upon the merger taking effect, if the domestic or foreign nonprofit corporation is the surviving corporation, then it is deemed:

(1) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger; and

(2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger the amount, if any, to which they are entitled under Article 13 of this Chapter.

(c) This section does not limit the power of a domestic or foreign nonprofit corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise."

Sec. 14. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 243 **CHAPTER 401**

AN ACT TO AMEND THE LAW REGARDING THE POWER OF A PERSONAL REPRESENTATIVE TO SETTLE CLAIMS FOR WRONGFUL DEATH, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-13-3(a)(23) reads as rewritten:

"(23) To maintain actions for the wrongful death of the decedent according to the provisions of Article 18 of this Chapter and to compromise or settle any such claims, whether in litigation or ~~not, provided that any such settlement shall be subject to the approval of a judge of superior court unless~~ not. Unless all persons who would be entitled to receive any damages recovered under G.S. 28A-18-2(b)(4) are competent adults and have consented in ~~writing,~~ writing, any such settlement shall be subject to the approval of a judge of the court or tribunal exercising jurisdiction over the action or a judge of the district or superior court in cases where no action has previously been filed. If the claim is brought under Article 31 of Chapter 143 of the General Statutes, the settlement is subject to the approval of the Industrial Commission in accordance with that Article. It shall be the duty of the personal representative in distributing the proceeds of such settlement in any instance to take into consideration and to make a fair allocation to those claimants for funeral, burial, hospital and medical expenses which would have been payable from damages which might have been recovered had a wrongful death action gone to judgment in favor of the plaintiff."

Sec. 2. This act is becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 357 CHAPTER 402

AN ACT TO EXEMPT THE DEPARTMENT OF TRANSPORTATION FROM THE REQUIREMENT OF MAKING QUARTERLY REPORTS OF MILEAGE OF STATE VEHICLES ASSIGNED TO THE DEPARTMENT AND TO ALLOW ASSIGNMENTS OF VEHICLES TO THE DEPARTMENT TO BE REVOKED ONLY WHEN THE DEPARTMENT CONSENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-341(8)i.7a. reads as rewritten:

"7a. To adopt with the approval of the Governor and to enforce rules and to coordinate State policy regarding (i) the permanent assignment of state-owned passenger motor vehicles and (ii) the use of and reimbursement for those vehicles for the limited commuting permitted by this subdivision. For the purpose of this subdivision 7a, "state-owned passenger motor vehicle" includes any state-owned passenger motor vehicle, whether or not owned, maintained or controlled by the Department of Administration, and regardless of the source of the funds used to purchase it. Notwithstanding the provisions of G.S. 20-190 or any other provisions of law, all state-owned passenger motor vehicles are subject to the provisions of this subdivision 7a; no permanent assignment shall be made and no one shall be exempt from payment of reimbursement for commuting or from the other provisions of this subdivision 7a except as provided by this subdivision 7a. Commuting, as defined and regulated by this subdivision, is limited to those specific cases in which the Secretary has received and accepted written justification, verified by historical data. The Department shall not assign any state-owned motor vehicle that may be used for commuting other than those authorized by the procedure prescribed in this subdivision.

A State-owned passenger motor vehicle shall not be permanently assigned to an individual who is likely to drive it on official business at a rate of less than 3,150 miles per quarter unless (i) the individual's duties are routinely related to public safety or (ii) the individual's duties are likely to expose ~~him~~ the individual routinely to life-threatening situations. A State-owned passenger motor vehicle shall also not be permanently assigned to an agency that is likely to drive it on official business at a rate of less than 3,150 miles per quarter unless the agency can justify to the Division of Motor Fleet Management the need for permanent assignment because of the unique use of the vehicle. Each agency, other than the Department of Transportation, that has a vehicle assigned to it or has an employee to whom a vehicle is assigned shall submit a quarterly report to the Division of Motor Fleet Management on the miles driven during the quarter by the assigned vehicle. The ~~Department of Administration~~ Division of Motor Fleet Management shall ~~verify, on a quarterly basis,~~

review the report to verify that each motor vehicle has been driven at the minimum allowable rate. If it has not and if the department by whom the individual to which the car is assigned is employed or the agency to which the car is assigned cannot justify the lower mileage for the ~~quarter in view of the minimum annual rate,~~ quarter, the permanent assignment shall be revoked immediately. The Department of Transportation shall submit an annual report to the Division of Motor Fleet Management on the miles driven during the year by vehicles assigned to the Department or to employees of the Department. If a vehicle included in this report has not been driven at least 12,600 miles during the year, the Department of Transportation shall review the reasons for the lower mileage and decide whether to terminate the assignment. The Division of Motor Fleet Management may not revoke the assignment of a vehicle to the Department of Transportation or an employee of that Department for failure to meet the minimum mileage requirement unless the Department of Transportation consents to the revocation.

Every individual who uses a State-owned passenger motor vehicle, pickup truck, or van to drive between ~~his~~ the individual's official work station and his or her home, shall reimburse the State for these trips at a rate computed by the Department. This rate shall approximate the benefit derived from the use of the vehicle as prescribed by federal law. Reimbursement shall be for 20 days per month regardless of how many days the individual uses the vehicle to commute during the month. Reimbursement shall be made by payroll deduction. Funds derived from reimbursement on vehicles owned by the Motor Fleet Management Division shall be deposited to the credit of the Division; funds derived from reimbursements on vehicles initially purchased with appropriations from the Highway Fund and not owned by the Division shall be deposited in a Special Depository Account in the Department of Transportation, which shall revert to the Highway Fund; funds derived from reimbursement on all other vehicles shall be deposited in a Special Depository Account in the Department of Administration which shall revert to the General Fund. Commuting, for purposes of this paragraph, does not include those individuals whose office is in their home, as determined by the Department of Administration, Division of Motor Fleet Management. Also, this paragraph does not apply to the following vehicles: (i) clearly marked police and fire vehicles, (ii) delivery trucks with seating only for the driver, (iii) flatbed trucks, (iv) cargo carriers with over a 14,000 pound capacity, (v) school and passenger buses with over 20 person capacities, (vi) ambulances, (vii) hearses, (viii) bucket trucks, (ix) cranes and derricks, (x) forklifts, (xi) cement mixers, (xii) dump trucks, (xiii) garbage trucks, (xiv) specialized utility repair trucks (except vans and pickup trucks), (xv) tractors, (xvi) unmarked law-enforcement vehicles that are used in undercover work and

are operated by full-time, fully sworn law-enforcement officers whose primary duties include carrying a firearm, executing search warrants, and making arrests, and (xvii) any other vehicle exempted under Section 274(d) of the Internal Revenue Code of 1954, and Federal Internal Revenue Services regulations based thereon. The Department of Administration, Division of Motor Fleet Management, shall report quarterly to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office on individuals who use State-owned passenger motor vehicles, pickup trucks, or vans between their official work stations and their homes, who are not required to reimburse the State for these trips.

The Department of Administration shall revoke the assignment or require the Department owning the vehicle to revoke the assignment of a State-owned passenger motor vehicle, pickup truck or van to any individual who:

I. Uses the vehicle for other than official business except in accordance with the commuting rules;

II. Fails to supply required reports to the Department of Administration, or supplies incomplete reports, or supplies reports in a form unacceptable to the Department of Administration and does not cure the deficiency within 30 days of receiving a request to do so;

III. Knowingly and willfully supplies false information to the Department of Administration on applications for permanent assignments, commuting reimbursement forms, or other required reports or forms;

IV. Does not personally sign all reports on forms submitted for vehicles permanently assigned to him or her and does not cure the deficiency within 30 days of receiving a request to do so;

V. Abuses the vehicle; or

VI. Violates other rules or policy promulgated by the Department of Administration not in conflict with this act.

A new requisition shall not be honored until the Secretary of the Department of Administration is assured that the violation for which a vehicle was previously revoked will not recur.

The Department of Administration, with the approval of the Governor, may delegate, or conditionally delegate, to the respective heads of agencies which own passenger motor vehicles or to which passenger motor vehicles are permanently assigned by the Department, the duty of enforcing all or part of the rules adopted by the Department of Administration pursuant to this subdivision 7a. The Department of Administration, with the approval of the Governor, may revoke this delegation of authority.

Prior to adopting rules under this paragraph, the Secretary of Administration may consult with the Advisory Budget Commission."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 423 **CHAPTER 403**

AN ACT TO ESTABLISH A STATE VOCATIONAL REHABILITATION/INDEPENDENT LIVING PROGRAM FOR PEOPLE WITH DISABILITIES.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 143-545 is repealed.

(b) Article 59 of Chapter 143 of the General Statutes is amended by inserting a new section to read:

"*§ 143-545A. Purpose, establishment and administration of program; services.*

(a) Policy. Recognizing that disability is a natural part of human experience, the State establishes as its policy that individuals with physical and mental disabilities should be able to participate to the maximum extent of their abilities in the economic, educational, cultural, social, and political activities available to all citizens of the State. To implement this policy, the Department of Human Resources shall establish and operate comprehensive and accountable programs of vocational rehabilitation and independent living for persons with disabilities. These programs are to be administered by the Division of Vocational Rehabilitation Services in collaboration with the Division of Services for the Blind, which conducts vocational rehabilitation and independent living programs for individuals who are blind or visually impaired, pursuant to Chapter 111 of the General Statutes and the rules of the Commission for the Blind adopted pursuant to G.S. 143B-157. The programs so provided shall be administered according to the following principles:

(1) The opportunity and ability to work and to live independently are important activities that enhance not only the lives of individuals with disabilities but also the greater society in which they live. These activities fulfill the need to be productive, promote self-esteem, and allow for participation in the full array of activities of daily living;

(2) Eligible individuals with disabilities shall be provided individualized training, independent living services, and educational and support services that prepare them for independent living and competitive employment opportunities in integrated settings with reasonable accommodations;

(3) Individuals with disabilities shall be active participants in their own vocational rehabilitation/independent living programs and shall be involved in making meaningful and informed choices about vocational/independent living goals and objectives and the related services they receive; and

(4) As full partners in their vocational rehabilitation and independent living programs, participants in the programs shall provide information required by the Department to determine eligibility and the nature of their disabilities, shall use other resources that

are available to assist in their programs, and shall assume joint responsibility with departmental staff for planning and implementing their programs.

(b) Services:

(1) Vocational rehabilitation and independent living services provided by the Department shall address comprehensively the needs of each individual to the maximum extent possible within available resources. These services shall contain labor force development and training components and services that enhance the independence and full participation of citizens with disabilities in community life. Specific services shall include assessment services to determine eligibility and rehabilitation needs; counseling, guidance, and referral services; physical and mental restoration services; reader services; vocational and other training services; job development and job placement services; interpreter services; on-the-job or other related personal assistance services including attendant care services; mobility and rehabilitation technology services; training services necessary for living in the community; and supported employment services.

(2) The Secretary of the Department of Human Resources shall adopt rules to establish eligibility for services, the nature and scope of services to be provided, standards for community rehabilitation programs and qualified personnel to provide services and conditions, criteria, and procedures under which services may be provided including financial need for services. The following services shall not be conditioned on the client's or applicant's ability to pay for the cost of those services:

a. Evaluation of rehabilitation potential, except for those vocational rehabilitation services other than of a diagnostic nature that are provided under an extended evaluation of rehabilitation potential;

b. Counseling, guidance, and referral services; and

c. Placement.

(3) The Secretary of the Department of Human Resources or, when appropriate, the Commission for the Blind, shall establish by rule a formula for a schedule of rates and fees to be paid by clients and other third party purchasers for services.

(4) The Secretary of the Department of Human Resources or, when appropriate, the Commission for the Blind, shall establish formal appeals procedures that are consistent with those required by federal regulations so that any applicant for or client of vocational rehabilitation or independent living services who is dissatisfied with any determinations made by rehabilitation counselors or coordinators concerning the furnishing or denial of services may request a timely review of those determinations. The appeal procedures shall be the same regardless of whether federal funds are included in the particular services."

Sec. 2. (a) G.S. 143-546 is repealed.

(b) Article 59 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-546A. Duties of Secretary; cooperation with federal rehabilitation services administration or successor.*

(a) In carrying out the purposes of this Article, the Secretary of the Department of Human Resources shall:

(1) Ensure the cooperation of other divisions in the Department of Human Resources in implementing the provisions of this Article;

(2) Cooperate with other departments, agencies, and institutions, both public and private, in providing for the vocational rehabilitation and independent living of individuals with disabilities, in studying the problems involved, and in establishing, developing, and providing the programs, facilities, and services necessary to implement this Article;

(3) Conduct research and gather statistical data related to the vocational rehabilitation and independent living needs of individuals with disabilities; and

(4) Administer the expenditure of funds made available by appropriations by the General Assembly by grants from the federal government, and by gifts, grants, or reimbursements from private or public sources, or other sources, and any combination thereof for vocational rehabilitation and independent living services. Gifts or donations, from either public or private sources, as may be offered unconditionally or under conditions that are proper and consistent with this Article, shall be deposited in the State treasury in a fund to be known as the 'Vocational Rehabilitation and Independent Living State Program Fund'.

(b) Federal Funds. In accepting federal funds provided under the Rehabilitation Act of 1973, as amended, the State accepts all of the provisions and benefits of the Act. The Department of Human Resources shall:

(1) Cooperate with the Federal Rehabilitation Services Administration or its successor agency in the administration of the Rehabilitation Act of 1973, as amended;

(2) Administer vocational rehabilitation and independent living services provided in cooperation with the Federal Rehabilitation Services Administration or its successor agency through an approved State plan;

(3) Adopt rules as required by the Rehabilitation Act of 1973, as amended, and federal regulations promulgated pursuant to it."

Sec. 3. This act becomes effective July 15, 1995.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 293 **CHAPTER 404**

AN ACT TO PERMIT THE IMPORTATION AND BOTTLING OF SPIRITUOUS LIQUOR WITHIN FOREIGN TRADE ZONES LOCATED AT THE WILMINGTON AND MOREHEAD CITY PORTS.

The General Assembly of North Carolina enacts:

Section 1. Article 11 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"*§ 18B-1105.1. Authorization of liquor importer/bottler permit.*

The holder of a liquor importer/bottler permit may:

(1) Receive spirituous liquor in closed containers into foreign trade zones at the State Port facilities in Morehead City and Wilmington from ships docked at the State Port facilities for the purpose of bottling, packaging, or labeling.

(2) Bottle, package, or label in this State spirituous liquor imported or received into a foreign trade zone pursuant to this section.

(3) Receive spirituous liquor in closed containers into the foreign trade zones at the State Port facilities in Morehead City and Wilmington from ships docked at the State Port facilities for storage, sale, shipment, and transshipment to the State or a local ABC board warehouse or, subject to the laws of other jurisdictions, to private or public agencies or establishments of other states or nations.

(4) Subject to the record-keeping requirements of G.S. 18B-1115, transport into or out of the foreign trade zones at the State Port facilities in Morehead City and Wilmington, the maximum amount of liquor allowed under federal law, if the transportation is related to the bottling, packaging, labeling, sale, or storage permitted by this section."

Sec. 2. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit -- $200.00.
(2) Off-premises malt beverage permit -- $200.00.
(3) On-premises unfortified wine permit -- $200.00.
(4) Off-premises unfortified wine permit -- $200.00.
(5) On-premises fortified wine permit -- $200.00.
(6) Off-premises fortified wine permit -- $200.00.
(7) Brown-bagging permit -- $200.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $100.00.
(8) Special occasion permit -- $200.00.
(9) Limited special occasion permit -- $25.00.
(10) Mixed beverages permit -- $750.00.
(11) Culinary permit -- $100.00.
(12) Unfortified winery permit -- $150.00.
(13) Fortified winery permit -- $150.00.
(14) Limited winery permit -- $150.00.
(15) Brewery permit -- $150.00.
(16) Distillery permit -- $150.00.
(17) Fuel alcohol permit -- $50.00.
(18) Wine importer permit -- $150.00.
(19) Wine wholesaler permit -- $150.00.
(20) Malt beverage importer permit -- $150.00.
(21) Malt beverage wholesaler permit -- $150.00.

(22) Bottler permit -- $150.00.
(23) Salesman permit -- $25.00.
(24) Vendor representative permit -- $25.00.
(25) Nonresident malt beverage vendor permit -- $50.00.
(26) Nonresident wine vendor permit -- $50.00.
(27) Any special one-time permit under G.S. 18B-1002 -- $25.00.
(28) Winery special event permit -- $100.00.
(29) Mixed beverages catering permit -- $100.00.
(30) Guest room cabinet permit -- $750.00.
(31) Liquor importer/bottler permit -- $250.00."

Sec. 3. G.S. 18B-1100 reads as rewritten:

"*§ 18B-1100. Commercial permits.*

The Commission may issue the following commercial permits:

(1) Unfortified winery
(2) Fortified winery
(3) Limited winery
(4) Brewery
(5) Distillery
(6) Fuel alcohol
(7) Wine importer
(8) Wine wholesaler
(9) Malt beverages importer
(10) Malt beverages wholesaler
(11) Bottler
(12) Salesman
(13) Vendor representative
(14) Nonresident malt beverage vendor
(15) Nonresident wine vendor
(16) Winery special show
(17) Liquor importer/bottler permit."

Sec. 4. G.S. 105-113.74(a) reads as rewritten:

"(a) License and Tax. -- A person holding any of the following commercial ABC permits shall obtain a State license for the activity authorized by the permit. The annual tax for each license is as stated.

ABC Permit	Corresponding State License	Tax
Brewery	Brewery	$500.00
Unfortified winery	Unfortified winery	100.00
Fortified winery	Fortified winery	100.00
Distillery	Distillery	100.00
Fuel Alcohol	Fuel Alcohol	10.00
Bottler	Bottler	250.00
Malt beverage importer, wine importer, or both	Importer	150.00
Nonresident malt beverage vendor, nonresident wine vendor, or both	Nonresident vendor	150.00 or 25.00 as provided in (b) below

Malt beverage wholesaler	Malt beverage wholesaler	150.00
Wine wholesaler	Wine wholesaler	150.00
Both malt beverage wholesaler and wine wholesaler		250.00
Salesman	Salesman	12.50
Vendor representative	Salesman	12.50
Liquor importer/bottler	Liquor importer/bottler	250.00".

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1995.

S.B. 653 **CHAPTER 405**

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE MEDICAL PRACTICE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-2 reads as rewritten:

"*§ 90-2. Board of Examiners.*

(a) In order to properly regulate the practice of medicine and surgery for the benefit and protection of the people of North Carolina, there is established a Board of Medical Examiners of the State of North Carolina. The Board shall consist of 12 members.

(1) Seven of the members shall be duly licensed physicians elected and nominated to the Governor by the North Carolina Medical Society.

(2) Of the remaining five members, all to be appointed by the Governor, at least three shall be public members and at least one shall be a physician assistant as defined in G.S. 90-18.1 or a nurse practitioner as defined in G.S. 90-18.2. A public member shall not be a health care provider nor the spouse of a health care provider. For purposes of board membership, 'health care provider' means any licensed health care professional and any agent or employee of any health care institution, health care insurer, health care professional school, or a member of any allied health profession. For purposes of this section, a person enrolled in a program to prepare him to be a licensed health care professional or an allied health professional shall be deemed a health care provider. For purposes of this section, any person with significant financial interest in a health service or profession is not a public member.

(b) No member appointed to the Board on or after November 1, 1981, shall serve more than two complete consecutive three-year terms, except that each member shall serve until his successor is chosen and qualifies.

(c) In order to establish regularly overlapping terms, the terms of office of the members shall expire as follows: two on October 31, 1993; four on October 31, 1994; four on October 31, 1995; and two on October 31, 1996. ~~No initial physician member of the Board may serve another term until at least three years from the date of expiration of his current term.~~

(d) Any ~~initial or regular~~ member of the Board may be removed from office by the Governor for good cause shown. Any vacancy in the ~~initial or regular~~ physician membership of the Board shall be filled for the period of the unexpired term by the Governor from a list of physicians submitted by the North Carolina Medical Society Executive Council. Any vacancy in the public membership of the Board shall be filled by the Governor for the unexpired term.

(e) The Board of Medical Examiners shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as any private person or corporation, subject only to approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing, and sale of real property. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board."

Sec. 2. G.S. 90-6 reads as rewritten:

"§ *90-6. Regulations governing applicants for license, examinations, etc.; appointment of subcommittee.*

The Board of Medical Examiners is empowered to prescribe such regulations as it may deem proper, governing applicants for license, admission to examinations, the conduct of applicants during examinations, and the conduct of examinations proper.

The Board of Medical Examiners shall appoint and maintain a subcommittee to work jointly with a subcommittee of the Board of Nursing to develop rules and regulations to govern the performance of medical acts by registered nurses, including the determination of reasonable fees to accompany an application for approval not to exceed one hundred dollars ($100.00) and for renewal of ~~such~~ approval not to exceed fifty dollars ($50.00). The fee for reactivation of an inactive incomplete application shall be five dollars ($5.00). Rules and regulations developed by this subcommittee from time to time shall govern the performance of medical acts by registered nurses and shall become effective when adopted by both the Board of Medical Examiners and the Board of Nursing. The Board of Medical Examiners shall have responsibility for securing compliance with these regulations."

Sec. 3. G.S. 90-12 reads as rewritten:

"§ *90-12. Limited license.*

(a) The Board may, whenever in its opinion the conditions of the locality where the applicant resides are such as to render it advisable, make ~~such~~ any modifications of the requirements of G.S. 90-9, 90-10, and 90-11 as in its judgment the interests of the people living in that locality may demand, and may issue to ~~such~~ the applicant a special license, to be entitled a 'Limited License,' authorizing the holder ~~thereof~~ of the limited license to practice medicine and surgery within the limits only of the districts specifically described therein. A resident's training license shall expire at

the time its holder ceases to be a resident in the training program or obtains any other license to practice medicine issued by the Board. The holder of the limited license practicing medicine or surgery beyond the boundaries of the districts as laid down in said license shall be guilty of a Class 3 misdemeanor, and upon conviction shall only be fined not less than twenty-five dollars ($25.00) nor more than fifty dollars ($50.00) for each and every offense; and the Board ~~is empowered to~~ may revoke ~~such~~ the limited license, in its discretion, after due notice.

(b) As used in this section:

(1) 'Limited license' includes a resident's training license.

(2) 'Resident training license' means a license to practice in a medical education and training program, approved by the Board, for the purpose of education or training."

Sec. 4. G.S. 90-14(a) reads as rewritten:

"(a) The Board shall have the power to deny, annul, suspend, or revoke a license, or other authority to practice medicine in this State, issued by the Board to any person who has been found by the Board to have committed any of the following acts or conduct, or for any of the following reasons:

(1) Immoral or dishonorable conduct.

(2) Producing or attempting to produce an abortion contrary to law.

(3) Made false statements or representations to the Board, or who has willfully concealed from the Board material information in connection with his application for a license.

(4) Repealed by Session Laws 1977, c. 838, s. 3.

(5) Being unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality. The Board is empowered and authorized to require a physician licensed by it to submit to a mental or physical examination by physicians designated by the Board before or after charges may be presented against him, and the results of examination shall be admissible in evidence in a hearing before the Board.

(6) Unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of his practice or otherwise, and whether committed within or without North Carolina. The Board shall not revoke the license of or deny a license to a person solely because of that person's practice of a therapy that is experimental, nontraditional, or that departs from acceptable and prevailing medical practices unless, by competent evidence, the Board can establish that the treatment has a safety risk greater than the prevailing treatment or that the treatment is generally not effective.

(7) Conviction in any court of a crime involving moral turpitude, or the violation of a law involving the practice of medicine, or a

conviction of a felony; provided that a felony conviction shall be treated as provided in subsection (c) of this section.

(8) By false representations has obtained or attempted to obtain practice, money or anything of value.

(9) Has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which he has been educated.

(10) Adjudication of mental incompetency, which shall automatically suspend a license unless the Board orders otherwise.

(11) Lack of professional competence to practice medicine with a reasonable degree of skill and safety for patients. In this connection the Board may consider repeated acts of a physician indicating his failure to properly treat a ~~patient and may~~ patient. The Board may, upon reasonable grounds, require ~~such~~ a physician to submit to inquiries or examinations, written or oral, by members of the Board or by other physicians licensed to practice medicine in this State, as the Board deems necessary to determine the professional qualifications of such licensee.

(12) Promotion of the sale of drugs, devices, appliances or goods for a patient, or providing services to a patient, in such a manner as to exploit the patient ~~for financial gain of the physician~~, and upon a finding of the exploitation ~~for financial gain~~, the Board may order restitution be made to the payer of the bill, whether the patient or the insurer, by the physician; provided that a determination of the amount of restitution shall be based on credible testimony in the record.

(13) ~~Suspension or revocation of a license to practice medicine in any other state, or territory of the United States, or other country.~~ Having a license to practice medicine or the authority to practice medicine revoked, suspended, restricted, or acted against or having a license to practice medicine denied by the licensing authority of any jurisdiction. For purposes of this subdivision, the licensing authority's acceptance of a license to practice medicine voluntarily relinquished by a physician or relinquished by stipulation, consent order, or other settlement in response to or in anticipation of the filing of administrative charges against the physician's license, is an action against a license to practice medicine.

(14) The failure to respond, within a reasonable period of time and in a reasonable manner as determined by the Board, to inquiries from the Board concerning any matter affecting the license to practice medicine.

For any of the foregoing reasons, the Board may deny the issuance of a license to an applicant or revoke a license issued to him, may suspend such a license for a period of time, and may impose conditions upon the continued practice after such period of suspension as the Board may deem advisable, may limit the accused physician's practice of medicine with respect to the extent, nature or location of his practice as the Board deems advisable. The Board may, in its discretion and upon such terms and

conditions and for such period of time as it may prescribe, restore a license so revoked or ~~rescinded.~~ rescinded, except that no license that has been revoked shall be restored for a period of two years following the date of revocation."

Sec. 5. G.S. 90-14.3 reads as rewritten:

"*§ 90-14.3. Service of notices.*

Any notice required by this Chapter may be served either personally or by an officer authorized by law to serve process, or by registered or certified mail, return receipt requested, directed to the licensee or applicant at his last known address as shown by the records of the Board. If notice is served personally, it shall be deemed to have been served at the time when the officer delivers the notice to the person addressed. Where notice is served by registered or certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery of the notice to ~~addressee or~~ the addressee, showing refusal of the addressee to accept the ~~notice.~~ notice, or showing failure to locate the addressee at the last known address as shown by the records of the Board."

Sec. 6. G.S. 90-14.9 reads as rewritten:

"*§ 90-14.9. Appeal bond; stay of Board order.*

(a) The person seeking the review shall file with the clerk of the reviewing court a copy of the notice of appeal and an appeal bond of two hundred dollars ($200.00) at the same time the notice of appeal is filed with the Board. ~~At~~ Subject to subsection (b) of this section, at any time before or during the review proceeding the aggrieved person may apply to the reviewing court for an order staying the operation of the Board decision pending the outcome of the review, which the court may grant or deny in its discretion.

(b) No stay shall be granted under this section unless the Board is given prior notice and an opportunity to be heard in response to the application for an order staying the operation of the Board decision."

Sec. 7. G.S. 90-14.11 reads as rewritten:

"*§ 90-14.11. Appeal; appeal bond.*

(a) Any party to the review proceeding, including the Board, may appeal from the decision of the superior court under rules of procedure applicable in other civil cases. No appeal bond shall be required of the Board. ~~The~~ Subject to subsection (b) of this section, the appealing party may apply to the superior court for a stay of that court's decision or a stay of the Board's decision, whichever shall be appropriate, pending the outcome of the appeal.

(b) No stay shall be granted unless all parties are given prior notice and an opportunity to be heard in response to the application for an order staying the operation of the Board decision."

Sec. 8. G.S. 90-14.13 reads as rewritten:

"*§ 90-14.13. Reports of disciplinary action by health care institutions; immunity from liability.*

The chief administrative officer of every licensed hospital or other health care ~~institution~~ institution, including Health Maintenance Organizations, as defined in G.S. 58-67-5, preferred providers, as defined in G.S. 58-50-50, and all other provider organizations that issue credentials to physicians who practice medicine in the ~~State~~ State, shall, after consultation with the chief of

staff of such institution, report to the Board any revocation, suspension, or limitation of a physician's privileges to practice in that institution. Each such institution shall also report to the Board resignations from practice in that institution by persons licensed under this Article. The Board shall report all violations of this subsection known to it to the licensing agency for the institution involved.

Any licensed physician who does not possess professional liability insurance shall report to the Board any award of damages or any settlement of any malpractice complaint affecting his or her practice within 30 days of the award or settlement.

The chief administrative officer of each insurance company providing professional liability insurance for physicians who practice medicine in North Carolina, the administrative officer of the Liability Insurance Trust Fund Council created by G.S. 116-220, and the administrative officer of any trust fund operated by a hospital authority, group, or provider shall report to the Board within 30 days:

(1) Any award of damages or settlement affecting or involving a physician it insures, or

(2) Any cancellation or nonrenewal of its professional liability coverage of a physician, if the cancellation or nonrenewal was for cause.

The Board may request details about any action and the officers shall promptly furnish the requested information. The reports required by this section are privileged and shall not be open to the public. The Board shall report all violations of this paragraph to the Commissioner of Insurance.

Any person making a report required by this section shall be immune from any criminal prosecution or civil liability resulting therefrom unless such person knew the report was false or acted in reckless disregard of whether the report was false."

Sec. 9. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 751 **CHAPTER 406**

AN ACT TO PROVIDE THAT TREATMENT OR SERVICES RENDERED BY CERTIFIED FEE-BASED PRACTICING PASTORAL COUNSELORS SHALL BE REIMBURSABLE UNDER THE STATE HEALTH PLAN AND OTHER HEALTH INSURANCE POLICIES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-40.7A(c) reads as rewritten:

"(c) Notwithstanding any other provision of this Part, provisions for benefits for necessary care and treatment of chemical dependency under this Part shall provide for benefit payments for the following providers of necessary care and treatment of chemical dependency:

(1) The following units of a general hospital licensed under Article 5 of General Statutes Chapter 131E:

a. Chemical dependency units in facilities licensed after October 1, 1984;
b. Medical units;
c. Psychiatric units; and

(2) The following facilities licensed after July 1, 1984, under Article 2 of General Statutes Chapter 122C:
a. Chemical dependency units in psychiatric hospitals;
b. Chemical dependency hospitals;
c. Residential chemical dependency treatment facilities;
d. Social setting detoxification facilities or programs;
e. Medical detoxification facilities or programs; and

(3) Duly licensed physicians and duly licensed practicing psychologists, certified clinical social workers, certified fee-based practicing pastoral counselors, certified clinical specialists in psychiatric and mental health nursing, and certified professionals working under the direct supervision of such physicians or psychologists in facilities described in (1) and (2) above and in day/night programs or outpatient treatment facilities licensed after July 1, 1984, under Article 2 of General Statutes Chapter 122C.

Provided, however, that nothing in this subsection shall prohibit the Plan from requiring the most cost effective treatment setting to be utilized by the person undergoing necessary care and treatment for chemical dependency."

Sec. 2. G.S. 135-40.7B(c) reads as rewritten:

"(c) Notwithstanding any other provisions of this Part, the following providers are authorized to provide necessary care and treatment for mental illness under this section:

(1) Licensed psychiatrists;
(2) Licensed or certified doctors of psychology;
(3) Certified clinical social workers;
(4) Psychiatric nurses;
(5) Other social workers under the direct employment and supervision of a licensed psychiatrist or licensed doctor of psychology;
(6) Psychological associates with a master's degree in psychology under the direct employment and supervision of a licensed psychiatrist or licensed or certified doctor of psychology;
(7) Licensed psychiatric hospitals and licensed general hospitals providing psychiatric treatment programs; ~~and~~
(8) Certified residential treatment facilities, community mental health centers, and partial hospitalization ~~facilities.~~ facilities; and
(9) Certified fee-based practicing pastoral counselors."

Sec. 3. G.S. 58-50-30 reads as rewritten:

"*§ 58-50-30. Discrimination forbidden; right to choose services of optometrist, podiatrist, certified clinical social worker, dentist, chiropractor, or psychologist, certified fee-based practicing pastoral counselor, or advanced practice registered nurse.*

(a) Discrimination between individuals of the same class in the amount of premiums or rates charged for any policy of insurance covered by Articles 50 through 55 of this Chapter, or in the benefits payable thereon, or in any

of the terms or conditions of such policy, or in any other manner whatsoever, is prohibited.

Whenever any policy of insurance governed by Articles 1 through 64 of this Chapter provides for payment of or reimbursement for any service rendered in connection with a condition or complaint which is within the scope of practice of a duly licensed optometrist, a duly licensed podiatrist, a duly licensed dentist, a duly licensed chiropractor, a duly certified clinical social worker, a duly licensed psychologist, a duly certified fee-based practicing pastoral counselor, or an advanced practice registered nurse, the insured or other persons entitled to benefits under such policy shall be entitled to payment of or reimbursement for such services, whether such services be performed by a duly licensed physician, a duly licensed optometrist, a duly licensed podiatrist, a duly licensed dentist, a duly licensed chiropractor, a duly certified clinical social worker, a duly licensed psychologist, a duly certified fee-based practicing pastoral counselor, or an advanced practice registered nurse, notwithstanding any provision contained in such policy. Whenever any policy of insurance governed by Articles 1 through 64 of this Chapter provides for certification of disability which is within the scope of practice of a duly licensed physician, a duly licensed optometrist, a duly licensed podiatrist, a duly licensed dentist, a duly licensed chiropractor, a duly certified clinical social worker, a duly licensed psychologist, a duly certified fee-based practicing pastoral counselor, or an advanced practice registered nurse, the insured or other persons entitled to benefits under such policy shall be entitled to payment of or reimbursement for such disability whether such disability be certified by a duly licensed physician, a duly licensed optometrist, a duly licensed podiatrist, a duly licensed dentist, a duly licensed chiropractor, a duly certified clinical social worker, a duly licensed psychologist, a duly certified fee-based practicing pastoral counselor, or an advanced practice registered nurse, notwithstanding any provisions contained in such policy. The policyholder, insured, or beneficiary shall have the right to choose the provider of such services notwithstanding any provision to the contrary in any other statute.

Whenever any policy of insurance provides coverage for medically necessary treatment, the insurer shall not impose any limitation on treatment or levels of coverage if performed by a duly licensed chiropractor acting within the scope of his practice as defined in G.S. 90-151 unless a comparable limitation is imposed on such medically necessary treatment if performed or authorized by any other duly licensed physician.

(b) For the purposes of this section, a 'duly licensed psychologist' shall be defined only to include a psychologist who is duly licensed in the State of North Carolina and has a doctorate degree in psychology and at least two years clinical experience in a recognized health setting, or has met the standards of the National Register of Health Service Providers in Psychology. After January 1, 1995, a duly licensed psychologist shall be defined as a licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board.

(c) For the purposes of this section, a 'duly certified clinical social worker' is a 'certified clinical social worker' as defined in G.S. 90B-3(2)

and certified by the North Carolina Certification Board for Social Work pursuant to Chapter 90B of the General Statutes.

(c1) For purposes of this section, a 'duly certified fee-based practicing pastoral counselor' shall be defined only to include fee-based practicing pastoral counselors certified by the North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors pursuant to Article 26 of Chapter 90 of the General Statutes.

(d) Payment or reimbursement is required by this section for a service performed by an advanced practice registered nurse only when:

(1) The service performed is within the nurse's lawful scope of practice;

(2) The policy currently provides benefits for identical services performed by other licensed health care providers;

(3) The service is not performed while the nurse is a regular employee in an office of a licensed physician;

(4) The service is not performed while the registered nurse is employed by a nursing facility (including a hospital, skilled nursing facility, intermediate care facility, or home care agency); and

(5) Nothing in this section is intended to authorize payment to more than one provider for the same service.

No lack of signature, referral, or employment by any other health care provider may be asserted to deny benefits under this provision.

For purposes of this section, an 'advanced practice registered nurse' means only a registered nurse who is duly licensed or certified as a nurse practitioner, clinical specialist in psychiatric and mental health nursing, or nurse midwife."

Sec. 4. G.S. 58-65-1 reads as rewritten:

"*§ 58-65-1. Regulation and definitions; application of other laws; profit and foreign corporations prohibited.*

(a) Any corporation heretofore or hereafter organized under the general corporation laws of the State of North Carolina for the purpose of maintaining and operating a nonprofit hospital and/or medical and/or dental service plan whereby hospital care and/or medical and/or dental service may be provided in whole or in part by said corporation or by hospitals and/or physicians and/or dentists participating in such plan, or plans, shall be governed by this Article and Article 66 of this Chapter and shall be exempt from all other provisions of the insurance laws of this State, heretofore enacted, unless specifically designated herein, and no laws hereafter enacted shall apply to them unless they be expressly designated therein.

The term 'hospital service plan' as used in this Article and Article 66 of this Chapter includes the contracting for certain fees for, or furnishing of, hospital care, laboratory facilities, X-ray facilities, drugs, appliances, anesthesia, nursing care, operating and obstetrical equipment, accommodations and/or any and all other services authorized or permitted to be furnished by a hospital under the laws of the State of North Carolina and approved by the North Carolina Hospital Association and/or the American Medical Association.

The term 'medical service plan' as used in this Article and Article 66 of this Chapter includes the contracting for the payment of fees toward, or furnishing of, medical, obstetrical, surgical and/or any other professional services authorized or permitted to be furnished by a duly licensed physician, except that in any plan in any policy of insurance governed by this Article and Article 66 of this Chapter that includes services which are within the scope of practice of a duly licensed optometrist, a duly licensed chiropractor, a duly licensed psychologist, an advanced practice registered nurse, a duly certified clinical social worker, a duly certified fee-based practicing pastoral counselor, and a duly licensed physician, then the insured or beneficiary shall have the right to choose the provider of the care or service, and shall be entitled to payment of or reimbursement for such care or service, whether the provider be a duly licensed optometrist, a duly licensed chiropractor, a duly licensed psychologist, an advanced practice registered nurse, a duly certified clinical social worker, a duly certified fee-based practicing pastoral counselor, or a duly licensed physician notwithstanding any provision to the contrary contained in such policy. The term 'medical services plan' also includes the contracting for the payment of fees toward, or furnishing of, professional medical services authorized or permitted to be furnished by a duly licensed provider of health services licensed under Chapter 90 of the General Statutes.

(b) Payment or reimbursement is required by this section for a service performed by an advanced practice registered nurse only when:

(1) The service performed is within the nurse's lawful scope of practice;

(2) The policy currently provides benefits for identical services performed by other licensed health care providers;

(3) The service is not performed while the nurse is a regular employee in an office of a licensed physician;

(4) The service is not performed while the registered nurse is employed by a nursing facility (including a hospital, skilled nursing facility, intermediate care facility, or home care agency); and

(5) Nothing in this section is intended to authorize payment to more than one provider for the same service.

No lack of signature, referral, or employment by any other health care provider may be asserted to deny benefits under this provision.

(c) For purposes of this section, an 'advanced practice registered nurse' means only a registered nurse who is duly licensed or certified as a nurse practitioner, clinical specialist in psychiatric and mental health nursing, or nurse midwife.

For the purposes of this section, a 'duly certified clinical social worker' is a 'certified clinical social worker' as defined in G.S. 90B-3(2) and certified by the North Carolina Certification Board for Social Work pursuant to Chapter 90B of the General Statutes.

For purposes of this section, a 'duly certified fee-based practicing pastoral counselor' shall be defined only to include fee-based practicing pastoral counselors certified by the North Carolina State Board of Examiners of Fee-

Based Practicing Pastoral Counselors pursuant to Article 26 of Chapter 90 of the General Statutes.

For the purposes of this section, a 'duly licensed psychologist' shall be defined only to include a psychologist who is duly licensed in the State of North Carolina and has a doctorate degree in psychology and at least two years clinical experience in a recognized health setting, or has met the standards of the National Register of Health Providers in Psychology. After January 1, 1995, a duly licensed psychologist shall be defined as a licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board.

The term 'dental service plan' as used in this Article and Article 66 of this Chapter includes contracting for the payment of fees toward, or furnishing of dental and/or any other professional services authorized or permitted to be furnished by a duly licensed dentist.

The insured or beneficiary of every 'medical service plan' and of every 'dental service plan,' as those terms are used in this Article and Article 66 of this Chapter, or of any policy of insurance issued thereunder, that includes services which are within the scope of practice of both a duly licensed physician and a duly licensed dentist shall have the right to choose the provider of such care or service, and shall be entitled to payment of or reimbursement for such care or service, whether the provider be a duly licensed physician or a duly licensed dentist notwithstanding any provision to the contrary contained in any such plan or policy.

The term 'hospital service corporation' as used in this Article and Article 66 of this Chapter is intended to mean any nonprofit corporation operating a hospital and/or medical and/or dental service plan, as herein defined. Any corporation heretofore or hereafter organized and coming within the provisions of this Article and Article 66 of this Chapter, the certificate of incorporation of which authorizes the operation of either a hospital or medical and/or dental service plan, or any or all of them, may, with the approval of the Commissioner of Insurance, issue subscribers' contracts or certificates approved by the Commissioner of Insurance, for the payment of either hospital or medical and/or dental fees, or the furnishing of such services, or any or all of them, and may enter into contracts with hospitals for physicians and/or dentists, or any or all of them, for the furnishing of fees or services respectively under a hospital or medical and/or dental service plan, or any or all of them.

The term 'preferred provider' as used in this Article and Article 66 of this Chapter with respect to contracts, organizations, policies or otherwise means a health care service provider who has agreed to accept, from a corporation organized for the purposes authorized by this Article and Article 66 of this Chapter or other applicable law, special reimbursement terms in exchange for providing services to beneficiaries of a plan administered pursuant to this Article and Article 66 of this Chapter. Except to the extent prohibited either by G.S. 58-65-140 or by regulations promulgated by the Department of Insurance not inconsistent with this Article and Article 66 of this Chapter, the contractual terms and conditions for special reimbursement shall be

those which the corporation and preferred provider find to be mutually agreeable.

(d) No foreign or alien hospital or medical and/or dental service corporation as herein defined shall be authorized to do business in this State."

Sec. 5. G.S. 122C-3(31) reads as rewritten:

"(31) 'Qualified professional' means any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or developmental disabilities or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, certified fee-based practicing pastoral counselors, and certified counselors."

Sec. 6. This act becomes effective July 15, 1995, and applies to treatment or services rendered on or after that date. This act expires July 1, 1999.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 896 **CHAPTER 407**

AN ACT TO ENHANCE THE INVESTIGATIVE CAPABILITIES OF LAW ENFORCEMENT IN CASES OF DRUG TRAFFICKING AND OTHER SERIOUS CRIMES BY PERMITTING THE USE OF ELECTRONIC SURVEILLANCE IN LIMITED CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. Article 16 of Chapter 15A of the General Statutes is amended by adding the heading "Electronic Surveillance" and by adding the following new sections to read:

"*§ 15A-286. Definitions.*

As used in this Article, unless the context requires otherwise:

(1) 'Aggrieved person' means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed.

(2) 'Attorney General' means the Attorney General of the State of North Carolina, unless otherwise specified.

(3) 'Aural transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

(4) 'Chapter 119 of the United States Code' means Chapter 119 of Part I of Title 18, United States Code, being Public Law 90-351, the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Electronic Communications Privacy Act of 1986.

(5) 'Communications common carrier' shall have the same meaning which is given the term 'common carrier' by section 153(h) of Title 47 of the United States Code.

(6) 'Contents' when used with respect to any wire, oral, or electronic communication means and includes any information concerning the substance, purport, or meaning of that communication.

(7) 'Electronic, mechanical, or other device' means any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than:

a. Any telephone or telegraph instrument, equipment, or facility, or any component thereof:

1. Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by the subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or

2. Being used by a provider of wire or electronic communication service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of the officer's duties.

b. A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(8) 'Electronic communication' means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects interstate or foreign commerce but does not include:

a. Any wire or oral communication;

b. Any communication made through a tone-only paging device; or

c. Any communication from a tracking device (as defined in section 3117 of Title 18 of the United States Code).

(9) 'Electronic communication service' means any service which provides to users thereof the ability to send or receive wire or electronic communications.

(10) 'Electronic communication system' means any wire, radio, electronic, magnetic, photooptical, or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the storage of such communications.

(11) 'Electronic surveillance' means the interception of wire, oral, or electronic communications as provided by this Article.

(12) 'Electronic storage' means:

a. Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

b. Any storage of such communication by an electronic communication service for the purposes of backup protection of the communication.

(13) 'Intercept' means the aural or other acquisition of the contents of any wire, oral, or electronic communication through the use of any electronic, mechanical, or other device.

(14) 'Investigative or law enforcement officer' means any officer of the State of North Carolina or any political subdivision thereof, who is empowered by the laws of this State to conduct investigations of or to make arrests for offenses enumerated in G.S. 15A-290, and any attorney authorized by the laws of this State to prosecute or participate in the prosecution of those offenses, including the Attorney General of North Carolina.

(15) 'Judge' means any judge of the trial divisions of the General Court of Justice.

(16) 'Judicial review panel' means a three-judge body, composed of such judges as may be assigned by the Chief Justice of the Supreme Court of North Carolina, which shall review applications for electronic surveillance orders and may issue orders valid throughout the State authorizing such surveillance as provided by this Article, and which shall submit a report of its decision to the Chief Justice.

(17) 'Oral communication' means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but the term does not include any electronic communication.

(18) 'Person' means any employee or agent of the United States or any state or any political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation.

(19) 'Readily accessible to the general public' means, with respect to a radio communication, that the communication is not:

a. Scrambled or encrypted;

b. Transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communication;

c. Carried on a subcarrier or other signal subsidiary to a radio transmission;

d. Transmitted over a communications system provided by a common carrier, unless the communication is a tone-only paging system communication; or

e. Transmitted on frequencies allocated under Part 25, Subpart D, E, or F or Part 94 of the Rules of the Federal Communications Commission as provided by 18 U.S.C. § 2510(16)(E).

(20) 'User' means any person or entity who:

a. Uses an electronic communications service; and

b. Is duly authorized by the provider of the service to engage in the use.

(21) 'Wire communication' means any aural transfer made in whole or in part through the use of facilities for the transmission of

communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and the term includes any electronic storage of such communication, but the term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

"§ 15A-287. *Interception and disclosure of wire, oral, or electronic communications prohibited.*

(a) Except as otherwise specifically provided in this Article, a person is guilty of a Class H felony if, without the consent of at least one party to the communication, the person:

(1) Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication.

(2) Willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

a. The device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communications; or

b. The device transmits communications by radio, or interferes with the transmission of such communications.

(3) Willfully discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through violation of this Article; or

(4) Willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this Article.

(b) It is not unlawful under this Article for any person to:

(1) Intercept or access an electronic communication made through an electronic communication system that is configured so that the electronic communication is readily accessible to the general public;

(2) Intercept any radio communication which is transmitted:

a. For use by the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

b. By any governmental, law enforcement, civil defense, private land mobile, or public safety communication system, including police and fire, readily available to the general public;

c. By a station operating on any authorized band within the bands allocated to the amateur, citizens band, or general mobile radio services; or

d. By any marine or aeronautical communication system; or

(3) Intercept any communication in a manner otherwise allowed by Chapter 119 of the United States Code.

(c) It is not unlawful under this Article for an operator of a switchboard, or an officer, employee, or agent of a provider of electronic communication service, whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of employment while engaged in any activity that is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, provided that a provider of wire or electronic communication service may not utilize service observing or random monitoring except for mechanical or service quality control checks.

(d) It is not unlawful under this Article for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of Chapter 5 of Title 47 of the United States Code, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(e) Any person who, as a result of the person's official position or employment, has obtained knowledge of the contents of any wire, oral, or electronic communication lawfully intercepted pursuant to an electronic surveillance order or of the pendency or existence of or implementation of an electronic surveillance order who shall knowingly and willfully disclose such information for the purpose of hindering or thwarting any investigation or prosecution relating to the subject matter of the electronic surveillance order, except as is necessary for the proper and lawful performance of the duties of his position or employment or as shall be required or allowed by law, shall be guilty of a Class G felony.

(f) Any person who shall, knowingly or with gross negligence, divulge the existence of or contents of any electronic surveillance order in a way likely to hinder or thwart any investigation or prosecution relating to the subject matter of the electronic surveillance order or anyone who shall, knowingly or with gross negligence, release the contents of any wire, oral, or electronic communication intercepted under an electronic surveillance order, except as is necessary for the proper and lawful performance of the duties of his position or employment or as is required or allowed by law, shall be guilty of a Class 1 misdemeanor.

(g) Any public officer who shall violate subsection (a) or (d) of this section or who shall knowingly violate subsection (e) of this section shall be removed from any public office he may hold and shall thereafter be ineligible to hold any public office, whether elective or appointed.

"§ *15A-288. Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices prohibited.*

(a) Except as otherwise specifically provided in this Article, a person is guilty of a Class H felony if the person:

(1) Manufactures, assembles, possesses, purchases, or sells any electronic, mechanical, or other device, knowing or having reason

to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications; or

(2) Places in any newspaper, magazine, handbill, or other publication, any advertisement of:

a. Any electronic, mechanical, or other device knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications; or

b. Any other electronic, mechanical, or other device where the advertisement promotes the use of the device for the purpose of the surreptitious interception of wire, oral, or electronic communications.

(b) It is not unlawful under this section for the following persons to manufacture, assemble, possess, purchase, or sell any electronic, mechanical, or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications:

(1) A communications common carrier or an officer, agent, or employee of, or a person under contract with, a communications common carrier, acting in the normal course of the communications common carrier's business, or

(2) An officer, agent, or employee of, or a person under contract with, the State, acting in the course of the activities of the State, and with the written authorization of the Attorney General.

(c) An officer, agent, or employee of, or a person whose normal and customary business is to design, manufacture, assemble, advertise and sell electronic, mechanical and other devices primarily useful for the purpose of the surreptitious interceptions of wire, oral, or electronic communications, exclusively for and restricted to State and federal investigative or law enforcement agencies and departments.

"§ *15A-289. Confiscation of wire, oral, or electronic communication interception devices.*

Any electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, sold, or advertised in violation of G.S. 15A-288 may be seized and forfeited to this State.

"§ *15A-290. Offenses for which orders for electronic surveillance may be granted.*

(a) Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of the United States Code, when the interception:

(1) May provide or has provided evidence of the commission of, or any conspiracy to commit:

a. Any of the drug-trafficking violations listed in G.S. 90-95(h); or

b. A continuing criminal enterprise in violation of G.S. 90-95.1.

(2) May expedite the apprehension of persons indicted for the commission of, or any conspiracy to commit, an offense listed in subdivision (1) of this subsection.

(b) Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of the United States Code, when the interception may provide, or has provided, evidence of any offense that involves the commission of, or any conspiracy to commit, murder, kidnapping, hostage taking, robbery, extortion, bribery, rape, or any sexual offense, or when the interception may expedite the apprehension of persons indicted for the commission of these offenses.

(c) Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of the United States Code, when the interception may provide, or has provided, evidence of any of the following offenses, or any conspiracy to commit these offenses, or when the interception may expedite the apprehension of persons indicted for the commission of these offenses:

(1) Any felony offense against a minor, including any violation of G.S. 14-27.7 (Intercourse and sexual offenses with certain victims; consent no defense), G.S. 14-41 (Abduction of children), G.S. 14-190.16 (First degree sexual exploitation of a minor), G.S. 14-190.17 (Second degree sexual exploitation of a minor), G.S. 14-190.18 (Promoting prostitution of a minor), G.S. 14-190.19 (Participating in prostitution of a minor), or G.S. 14-202.1 (Taking indecent liberties with children).

(2) Any felony obstruction of a criminal investigation, including any violation of G.S. 14-221.1 (Altering, destroying, or stealing evidence of criminal conduct).

(3) Any felony offense involving interference with, or harassment or intimidation of, jurors or witnesses, including any violation of G.S. 14-225.2 or G.S. 14-226.

(4) Any felony offense involving assault or threats against any executive or legislative officer in violation of Article 5A of Chapter 14 of the General Statutes or assault with a firearm or other deadly weapon upon governmental officers or employees in violation of G.S. 14-34.2.

(5) Any offense involving the manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of weapons of mass death or destruction in violation of G.S. 14-288.8 or the adulteration or misbranding of food, drugs, cosmetics, etc., with the intent to cause serious injury in violation of G.S. 14-34.4.

(d) When an investigative or law enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized, intercepts wire, electronic, or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in G.S. 15A-294(a) and (b). Such contents and any evidence derived therefrom may be used in accordance with G.S. 15A-294(c) when authorized or approved by a judicial review panel where the panel finds, on subsequent application made as soon as practicable, that the

contents were otherwise intercepted in accordance with this Article or Chapter 119 of the United States Code.

(e) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this Article or Chapter 119 of the United States Code, shall lose its privileged character.

"*§ 15A-291. Application for electronic surveillance order; judicial review panel.*

(a) The Attorney General may, pursuant to the provisions of section 2516(2) of Chapter 119 of the United States Code, apply to a judicial review panel for an order authorizing or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offenses as to which the application is made, and for such offenses and causes as are enumerated in G.S. 15A-290. A judicial review panel shall be composed of such judges as may be assigned by the Chief Justice of the Supreme Court of North Carolina, which shall review applications for electronic surveillance orders and may issue orders valid throughout the State authorizing such surveillance as provided by this Article, and which shall submit a report of its decision to the Chief Justice. A judicial review panel may be appointed by the Chief Justice pursuant to the Attorney General's written notification of his intent to apply for an electronic surveillance order.

(b) A judicial review panel is hereby authorized to grant orders valid throughout the State for the interception of wire, oral, or electronic communications. Applications for such orders may be made by the Attorney General and by no other person. The Attorney General, in applying for such orders, and a judicial review panel in granting such orders, shall comply with all procedural requirements of section 2518 of Chapter 119 of the United States Code. The Attorney General may make emergency applications as provided by section 2518 of Chapter 119 of the United States Code. In applying section 2518 the word 'judge' in that section shall be construed to refer to the judicial review panel, unless the context otherwise indicates. The judicial review panel may stipulate any special conditions it feels necessary to assure compliance with the terms of this act.

(c) No judge who sits as a member of a judicial review panel shall preside at any trial or proceeding resulting from or in any manner related to information gained pursuant to a lawful electronic surveillance order issued by that panel.

(d) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication must be made in writing upon oath or affirmation to the judicial review panel. Each application must include the following information:

(1) The identity of the office requesting the application;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including:

a. Details as to the particular offense that has been, or is being committed;

b. A particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

c. A particular description of the type of communications sought to be intercepted; and

d. The identity of the person, if known, committing the offense and whose communications are to be intercepted;

(3) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(4) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter must be added;

(5) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making adjudication, made to a judicial review panel for authorization to intercept, or for approval of interceptions of wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by that judicial review panel on each such application; and

(6) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(e) Before acting on the application, the judicial review panel may examine on oath the person requesting the application or any other person who may possess pertinent information, but information other than that contained in the affidavit may not be considered by the panel in determining whether probable cause exists for the issuance of the order unless the information is either recorded or contemporaneously summarized in the record or on the face of the order by the panel.

"§ 15A-292. *Request for application for electronic surveillance order.*

(a) The head of any municipal, county, or State law enforcement agency or any district attorney may submit a written request to the Attorney General that the Attorney General apply to a judicial review panel for an electronic surveillance order to be executed within the requesting agency's jurisdiction. The written requests shall be on a form approved by the Attorney General and shall provide sufficient information to form the basis for an application for an electronic surveillance order. The head of a law enforcement agency shall also submit a copy of the request to the district attorney, who shall review the request and forward it to the Attorney General along with any comments he may wish to include. The Attorney General is authorized to review the request and decide whether it is appropriate to submit an application to a judicial review panel for an electronic surveillance order. If a request for an application is deemed inappropriate, the Attorney General

shall send a signed, written statement to the person submitting the request, and to the district attorney, summarizing the reasons for failing to make an application. If the Attorney General decides to submit an application to a judicial review panel, he shall so notify the requesting agency head, the district attorney, and the head of the local law enforcement agency which has the primary responsibility for enforcing the criminal laws in the location in which it is anticipated the majority of the surveillance will take place, if not the same as the requesting agency head, unless the Attorney General has probable cause to believe that the latter notifications should substantially jeopardize the success of the surveillance or the investigation in general. If a judicial review panel grants an electronic surveillance order, a copy of such order shall be sent to the requesting agency head and the district attorney, and a summary of the order shall be sent to the head of the local law enforcement agency with primary responsibility for enforcing the criminal laws in the jurisdiction where the majority of the surveillance will take place, if not the same as the requesting agency head, unless the judicial review panel finds probable cause to believe that the latter notifications would substantially jeopardize the success of the surveillance or the investigation.

(b) This Article does not limit the authority of the Attorney General to apply for electronic surveillance orders independent of, or contrary to, the requests of law enforcement agency heads, nor does it limit the discretion of the Attorney General in determining whether an application is appropriate under any given circumstances.

(c) The Chief Justice of the North Carolina Supreme Court shall receive a report concerning each decision of a judicial review panel.

"*§ 15A-293. Issuance of order for electronic surveillance; procedures for implementation.*

(a) Upon application by the Attorney General, a judicial review panel may enter an ex parte order, as requested or as modified, authorizing the interception of wire, oral, or electronic communications, if the panel determines on the basis of the facts submitted by the applicant that:

(1) There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense set out in G.S. 15A-290;

(2) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(3) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and

(4) There is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by the individual described in subdivision (1) of this subsection.

(b) Each order authorizing the interception of any wire, oral, or electronic communications must specify:

(1) The identity of the person, if known, whose communications are to be intercepted;

(2) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted, and the means by which such interceptions may be made;

(3) A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

(4) The identity of the agency authorized to intercept the communications and of the person requesting the application; and

(5) The period of time during which such interception is authorized, including a statement as to whether or not the interception automatically terminates when the described communication has been first obtained.

(c) No order entered under this Article may authorize the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. Extensions of an order may be granted, but only upon application for an extension made in accordance with G.S. 15A-291 and the panel making the findings required by subsection (a) of this section. The period of extension may be no longer than the panel determines to be necessary to achieve the purpose for which it was granted and in no event for longer than 15 days. Every order and extension thereof must contain a provision that the authorization to intercept be executed as soon as practicable, be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this Article, and terminate upon attainment of the authorized objective, or in any event in 30 days or 15 days, as is appropriate.

(d) Whenever an order authorizing interception is entered pursuant to this Article, the order may require reports to be made to the issuing judicial review panel showing that progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports must be made at such intervals as the panel may require.

(1) The contents of any wire, oral, or electronic communication intercepted by any means authorized by this Article must be recorded on tape, wire, or electronic or other comparable device. The recording of the contents of any wire, electronic, or oral communication under this subsection must be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, the recordings must be made available to the judicial review panel and sealed under its direction. Custody of the recordings is wherever the panel orders. They may not be destroyed except upon an order of the issuing panel and in any event must be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of G.S. 15A-294(a) and (b) for investigations. The contents of any wire, oral, or electronic communication or evidence derived therefrom may

not be disclosed or used under G.S. 15A-294(c) unless they have been kept sealed.

(2) Applications made and orders granted under this Article must be sealed by the panel. Custody of the applications and orders may be disclosed only upon a showing of good cause before the issuing panel and may not be destroyed except on its order and in any event must be kept for 10 years.

(3) Any violation of the provisions of this subsection may be punished as for contempt.

(e) The State Bureau of Investigation shall own or control and may operate any equipment used to implement electronic surveillance orders issued by a judicial review panel and may operate or use, in implementing any electronic surveillance order, electronic surveillance equipment in which a local government or any of its agencies has a property interest.

(f) The Attorney General shall establish procedures for the use of electronic surveillance equipment in assisting local law enforcement agencies implementing electronic surveillance orders. The Attorney General shall supervise such assistance given to local law enforcement agencies and is authorized to conduct statewide training sessions for investigative and law enforcement officers regarding this Article.

"§ 15A-294. Authorization for disclosure and use of intercepted wire, oral, or electronic communications.

(a) Any investigative or law enforcement officer who, by any means authorized by this Article or Chapter 119 of the United States Code, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(b) Any investigative or law enforcement officer, who by any means authorized by this Article or Chapter 119 of the United States Code, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may use such contents to the extent such use is appropriate to the proper performance of the officers' official duties.

(c) Any person who has received, by any means authorized by this Article or Chapter 119 of the United States Code, any information concerning a wire, oral, or electronic communication, or evidence derived therefrom, intercepted in accordance with the provisions of this Article, may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any proceeding in any court or before any grand jury in this State, or in any court of the United States or of any state, or in any federal or state grand jury proceeding.

(d) Within a reasonable time, but no later than 90 days after the filing of an application for an order or the termination of the period of an order or the extensions thereof, the issuing judicial review panel must cause to be served on the persons named in the order or the application and such other parties as the panel in its discretion may determine, an inventory that includes notice of:

(1) The fact of the entry of the order or the application;

(2) The date of the entry and the period of the authorized interception; and

(3) The fact that during the period wire, oral, or electronic communications were or were not intercepted.

(e) The issuing judicial review panel, upon the filing of a motion, may in its discretion, make available to such person or his counsel for inspection, such portions of the intercepted communications, applications, and orders as the panel determines to be required by law or in the interest of justice.

(f) The contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, may not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in any court of this State unless each party, not less than 20 working days before the trial, hearing, or other proceeding, has been furnished with a copy of the order and accompanying application, under which the interception was authorized.

(g) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this State, or a political subdivision thereof, may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that:

(1) The communication was unlawfully intercepted;

(2) The order of authorization under which it was intercepted is insufficient on its face; or

(3) The interception was not made in conformity with the order of authorization.

Such motion must be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of this motion. If the motion is granted, the contents of the intercepted wire, oral, or electronic communication, or evidence derived therefrom, must be treated as having been obtained in violation of this Article.

(h) In addition to any other right to appeal, the State may appeal:

(1) From an order granting a motion to suppress made under subdivision (1) of this subsection, if the district attorney certifies to the judge granting the motion that the appeal is not taken for purposes of delay. The appeal must be taken within 30 days after the date the order of suppression was entered and must be prosecuted as are other interlocutory appeals; or

(2) From an order denying an application for an order of authorization, and the appeal may be made ex parte and must be considered in camera and in preference to all other pending appeals.

"*§ 15A-295. Reports concerning intercepted wire, oral, or electronic communications.*

In January of each year, the Attorney General of this State must report to the Administrative Office of the United States Court the information required to be filed by section 2519 of Title 18 of the United States Code, as

heretofore or hereafter amended, and file a copy of the report with the Administrative Office of the Courts of North Carolina.

"§ 15A-296. *Recovery of civil damages authorized.*

(a) Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of this Article, has a civil cause of action against any person who intercepts, discloses, uses, or procures any other person to intercept, disclose, or use such communications, and is entitled to recover from any other person:

(1) Actual damages, but not less than liquidated damages, computed at the rate of one hundred dollars ($100.00) a day for each day of violation or one thousand dollars ($1,000), whichever is higher;

(2) Punitive damages; and

(3) A reasonable attorneys' fee and other litigation costs reasonably incurred.

(b) Good faith reliance on a court order or on a representation made by the Attorney General or a district attorney is a complete defense to any civil or criminal action brought under this Article.

"§ 15A-297. *Conformity to provisions of federal law.*

It is the intent of this Article to conform the requirements of all interceptions of wire, oral, or electronic communications conducted by investigative or law enforcement officers in this State to provisions of Chapter 119 of the United States Code, except where the context indicates a purpose to provide safeguards even more protective of individual privacy and constitutional rights.

"§ 15A-298. *Subpoena authority.*

Pursuant to rules issued by the Attorney General, the Director of the State Bureau of Investigation or his designee may issue an administrative subpoena to a communications common carrier or an electronic communications service to compel production of business records if the records:

(1) Disclose information concerning telephone toll billing records or subscriber information; and

(2) Are material to an active criminal investigation being conducted by the State Bureau of Investigation."

Sec. 2. G.S. 114-15(b) reads as rewritten:

"(b) The State Bureau of Investigation is further authorized, upon request of the Governor or the Attorney General, to investigate the commission or attempted commission of the crimes defined in the following statutes:

(1) All sections of Article 4A of Chapter 14 of the General Statutes;
(2) G.S. 14-277.1;
(3) G.S. 14-277.2;
(4) G.S. 14-283;
(5) G.S. 14-284;
(6) G.S. 14-284.1;
(7) G.S. 14-288.2;
(8) G.S. 14-288.7;
(9) G.S. 14-288.8;
(10) G.S. 14-288.20;

(11) G.S. 14-284.2;
(12) G.S. 14-399(e);
(12a) G.S. 15A-287 and G.S. 15A-288;
(13) G.S. 130A-26.1;
(14) G.S. 143-215.6B;
(15) G.S. 143-215.88B; and
(16) G.S. 143-215.114B."

Sec. 3. This act becomes effective December 1, 1995.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 899 **CHAPTER 408**

AN ACT TO PROVIDE THAT CERTAIN FINANCIAL INSTITUTIONS' RECORDS ARE CONFIDENTIAL.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"SENATE BILL 899

"*§ 53-99.1. Confidential records.*

(a) As used in this section:

(1) 'Compliance review committee' means:

a. An audit, loan review, or compliance committee appointed by the board of directors of a bank or any other person to the extent the person acts at the direction of or reports to a compliance review committee; and

b. Whose functions are to audit, evaluate, report, or determine compliance with any of the following:

1. Loan underwriting standards;
2. Asset quality;
3. Financial reporting to federal or State regulatory agencies;
4. Adherence to the bank's investment, lending, accounting, ethical, and financial standards; or
5. Compliance with federal or State statutory requirements.

(2) 'Compliance review documents' means documents prepared for or created by a compliance review committee.

(3) 'Bank' means a bank chartered under the laws of North Carolina or of the United States and any subsidiaries thereof.

(4) 'Loan review committee' means a person or group of persons who, on behalf of a bank, reviews assets, including loans held by the bank, for the purpose of assessing the credit quality of the loans or the loan application process, compliance with the bank's investment and loan policies and compliance with applicable laws and regulations.

(5) 'Person' means an individual, group of individuals, board, committee, partnership, firm, association, corporation, or other entity.

(b) Banks chartered under the laws of North Carolina or of the United States shall maintain complete records of compliance review documents, and the documents shall be available for examination by any federal or State bank regulatory agency having supervisory jurisdiction. Notwithstanding Chapter 132 of the General Statutes, compliance review documents in the custody of a bank or regulatory agency are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action against a bank, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence."

Sec. 2. Article 4 of Chapter 54B of the General Statutes is amended by adding a new section to read:

"*§ 54B-63.1. Confidential records.*

(a) As used in this section:

(1) 'Compliance review committee' means:

a. An audit, loan review, or compliance committee appointed by the board of directors of an association or any other person to the extent the person acts at the direction of or reports to a compliance review committee; and

b. Whose functions are to audit, evaluate, report, or determine compliance with any of the following:

1. Loan underwriting standards;
2. Asset quality;
3. Financial reporting to federal or State regulatory agencies;
4. Adherence to the association's investment, lending, accounting, ethical, and financial standards; or
5. Compliance with federal or State statutory requirements.

(2) 'Compliance review documents' means documents prepared for or created by a compliance review committee.

(3) 'Loan review committee' means a person or group of persons who, on behalf of an association, reviews assets, including loans held by the association, for the purpose of assessing the credit quality of the loans or the loan application process, compliance with the association's investment and loan policies, and compliance with applicable laws and regulations.

(4) 'Person' means an individual, group of individuals, board, committee, partnership, firm, association, corporation, or other entity.

(b) Associations chartered under the laws of North Carolina or of the United States shall maintain complete records of compliance review documents, and the documents shall be available for examination by any federal or State association regulatory agency having supervisory jurisdiction. Notwithstanding Chapter 132 of the General Statutes, compliance review documents in the custody of an association or regulatory agency are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action against an association, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence."

Sec. 3. Article 4 of Chapter 54C of the General Statutes is amended by adding a new section to read:

"§ *54C-60.1. Confidential records.*

(a) As used in this section:

(1) 'Compliance review committee' means:

a. An audit, loan review, or compliance committee appointed by the board of directors of a savings bank or any other person to the extent the person acts at the direction of or reports to a compliance review committee; and

b. Whose functions are to audit, evaluate, report, or determine compliance with any of the following:

1. Loan underwriting standards;
2. Asset quality;
3. Financial reporting to federal or State regulatory agencies;
4. Adherence to the savings bank's investment, lending, accounting, ethical, and financial standards; or
5. Compliance with federal or State statutory requirements.

(2) 'Compliance review documents' means documents prepared for or created by a compliance review committee.

(3) 'Loan review committee' means a person or group of persons who, on behalf of a savings bank, reviews assets, including loans held by the savings bank, for the purpose of assessing the credit quality of the loans or the loan application process, compliance with the savings bank's investment and loan policies, and compliance with applicable laws and regulations.

(4) 'Person' means an individual, group of individuals, board, committee, partnership, firm, association, corporation, or other entity.

(b) Savings banks chartered under the laws of North Carolina or of the United States shall maintain complete records of compliance review documents, and the documents shall be available for examination by any federal or State savings bank regulatory agency having supervisory jurisdiction. Notwithstanding Chapter 132 of the General Statutes, compliance review documents in the custody of a savings bank or regulatory agency are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action against a savings bank, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 990 **CHAPTER 409**

AN ACT TO PROVIDE FOR MORE EFFECTIVE ADMINISTRATIVE PERMIT REVIEW UNDER THE COASTAL AREA MANAGEMENT ACT.

The General Assembly of North Carolina enacts:

Section 1. G. S. 113A-121.1(b) reads as rewritten:

"(b) A person other than a permit applicant or the Secretary who is dissatisfied with a decision to deny or grant a minor or major development permit may file a petition for a contested case hearing only if the Commission determines that a hearing is appropriate. A request for a determination of the appropriateness of a contested case hearing shall be made in writing and received by the Commission within 20 days after the disputed permit decision is made. A determination of the appropriateness of a contested case shall be made within 15 days after a request for a determination is received and shall be based on whether the person seeking to commence a contested case:

(1) Has alleged that the decision is contrary to a statute or rule;

(2) Is directly affected by the decision; and

~~(3) Has a substantial likelihood of prevailing in a contested case.~~

(3) Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

If the Commission determines a contested case is appropriate, the petition for a contested case shall be filed within 20 days after the Commission makes its determination. A determination that a person may not commence a contested case is a final agency decision and is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on judicial review, the court determines that the Commission erred in determining that a contested case would not be appropriate, the court shall remand the matter for a contested case hearing under G.S. 150B-23 and final Commission decision on the permit pursuant to G.S. 113A-122. Decisions in such cases shall be rendered pursuant to those rules, regulations, and other applicable laws in effect at the time of the commencement of the contested case."

Sec. 2. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

H.B. 504 **CHAPTER 410**

AN ACT TO SUBTRACT ANY TRADE-IN ALLOWANCE IN CALCULATING THE ALTERNATIVE HIGHWAY USE TAX ON LEASED VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-187.5(b) reads as rewritten:

"(b) Rate. -- The tax rate on the gross receipts from the short-term lease or rental of a motor vehicle is eight percent (8%) and the tax rate on the gross receipts from the long-term lease or rental of a motor vehicle is three percent (3%). Gross receipts does not include the amount of any allowance given for a motor vehicle taken in trade as a partial payment on the lease or rental price. The maximum tax in G.S. 105-187.3(a) applies to a continuous lease or rental of a motor vehicle to the same person."

Sec. 2. This act becomes effective October 1, 1995, and applies to certificates of title issued on or after that date.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

S.B. 541 **CHAPTER 411**

AN ACT TO PROVIDE FOR REVIEW OF THE DIRECTOR OF SOCIAL SERVICES' DECISIONS NOT TO FILE ABUSE, NEGLECT, OR DEPENDENCY PETITIONS AND TO MAKE CLARIFYING CHANGES TO THE LAW GOVERNING INVESTIGATIONS OF REPORTS OF ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-544 reads as rewritten:

"*§ 7A-544. Investigation by Director; access to confidential information; notification of person making the report.*

When a report of abuse, neglect, or dependency is received, the Director of the Department of Social Services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the Director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the Director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the Department of Social ~~Services~~ Services, including the identity of the reporter, shall be held in strictest confidence by the Department.

When a report of a juvenile's death as a result of suspected maltreatment is received, the Director of the Department of Social Services shall immediately ascertain if other juveniles remain in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection.

If the investigation indicates that abuse, neglect, or dependency has occurred, the Director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the Director shall immediately provide or arrange for protective services. If the parent or other caretaker refuses to accept the protective services provided or arranged by the Director, the Director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the Director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 46 of this Chapter.

In performing any ~~of these duties,~~ duties related to the investigation of the complaint or the provision or arrangement for protective services, the Director may consult with any public or private agencies or individuals, including the available State or local law-enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the Director. The Director or the Director's representative may make a written demand for any information or reports, whether or not confidential, that may in the Director's opinion be relevant to the ~~protective services case.~~ investigation of or the provision for protective services. Upon the Director's or the Director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of ~~such~~ the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in ~~such~~ the actions shall be accorded priority by the trial and appellate courts.

Within five working days after receipt of the report of abuse, neglect, or dependency, the Director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

Within five working days after completion of the protective services investigation, the Director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county Department of Social Services is taking action to protect the juvenile, and what action it is ~~taking,~~ taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the Director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the Director's decision, he may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive ~~his~~ the person's right to this notification and no notification is required if the person making the report does not identify himself to the Director."

Sec. 2. This act becomes effective October 1, 1995, and applies to reports of abuse, neglect, or dependency submitted on or after that date.

In the General Assembly read three times and ratified this the 11th day of July, 1995.

H.B. 556 **CHAPTER 412**

AN ACT TO ENABLE JOINT MUNICIPAL POWER AGENCIES TO EFFECT CORPORATE REORGANIZATION AND TO MAKE TECHNICAL CHANGES TO THE STATUTES GOVERNING JOINT MUNICIPAL POWER AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159B-2 reads as rewritten:

"*§ 159B-2. Legislative findings and purposes.*

The General Assembly hereby finds and determines that:

A critical situation exists with respect to the present and future supply of electric power and energy in the State of North Carolina;

The public utilities operating in the State have sustained greatly increased capital and operating costs;

Such public utilities have found it necessary to postpone or curtail construction of planned generation and transmission facilities serving the consumers of electricity in the State, increasing the ultimate cost of such facilities to the public utilities, and that such postponements and curtailments will have an adverse effect on the provision of adequate and reliable electric service in the State;

The above conditions have occurred despite substantial increases in electric rates;

In the absence of further material increases in electric rates, additional postponements and curtailments in the construction of additional generation and transmission facilities may occur, thereby impairing those utilities' ability to continue to provide an adequate and reliable source of electric power and energy in the State;

Seventy-two municipalities in the State have for many years owned and operated systems for the distribution of electric power and energy to customers in their respective service areas and are empowered severally to engage in the generation and transmission of electric power and energy;

Such municipalities owning electric distribution systems have an obligation to provide their inhabitants and customers an adequate, reliable and economical source of electric power and energy in the future;

In order to achieve the economies and efficiencies made possible by the proper planning, financing, sizing and location of facilities for the generation and transmission of electric power and energy which are not practical for any municipality acting alone, and to insure an adequate, reliable and economical supply of electric power and energy to the people of the State, it is desirable for the State of North Carolina to authorize municipal electric systems to jointly plan, finance, develop, own and operate electric generation and transmission facilities appropriate to their needs in order to provide for their present and future power requirements for all uses without supplanting or displacing the service at retail of other electric suppliers operating in the State; and

The joint planning, financing, development, ownership and operation of electric generation and transmission facilities by municipalities which own electric distribution systems and the issuance of revenue bonds for such purposes as provided in this Chapter is for a public use and for public and municipal purposes and is a means of achieving economies, adequacy and reliability in the generation of electric power and energy and in the meeting of future needs of the State and its inhabitants.

In addition to the authority granted municipalities to jointly plan, finance, develop, own and operate electric generation and transmission facilities by Article 2 of this Chapter and the other powers granted in said Article 2, and in addition and supplemental to powers otherwise conferred on municipalities by the laws of this State for interlocal cooperation, it is desirable for the State of North Carolina to authorize municipalities and joint agencies to form joint municipal assistance agencies which shall be empowered to provide aid and assistance to municipalities in the construction, ownership, maintenance, expansion and operation of their electric systems, and to empower joint agencies authorized herein to provide aid and assistance to municipalities or joint municipal assistance agencies in the development and implementation of integrated resource planning, including, but not limited to, the evaluation of resources, generating facilities, alternative energy resources, conservation and load management programs, transmission and distribution facilities, and purchase power options, and in the development, construction and operation of supply-side and demand-side resources, in addition to exercising such other powers as hereinafter provided to joint municipal assistance agencies and joint agencies. In order to provide maximum economies and efficiencies to municipalities and the consuming public in the generation and transmission of electric power and energy contemplated by Article 2 of this Chapter, it is also desirable that the joint municipal assistance agencies authorized herein be empowered to act as provided in Article 3 of this Chapter and that such agency or agencies be empowered to act for and on behalf of any one or more ~~municipalities,~~ municipalities or joint agencies, as requested, with respect to the construction, ownership, maintenance, expansion and operation of their electric systems; and that the joint agencies authorized herein be empowered to act as provided in Article 2 of this Chapter and that such ~~agency or~~ joint agencies be empowered to act for and on behalf of any one or more municipalities or joint municipal assistance agencies, in each case as requested, with respect to the integrated resource planning and development, construction, and operation of supply-side and demand-side options described above."

Sec. 2. G.S. 159B-3 reads as rewritten:

"*§ 159B-3. Definitions.*

The following terms whenever used or referred to in this Chapter shall have the following respective meanings unless a different meaning clearly appears from the context:

(1) 'Bonds' shall mean ~~electric~~ revenue bonds, notes and other evidences of indebtedness of a joint agency or municipality issued under the provisions of this Chapter and shall include refunding bonds.

(2) 'Cost' or 'cost of a project' shall mean, but shall not be limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto; the cost of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same; administrative, legal, engineering and inspection expenses; financing fees, expenses and costs; working capital; initial fuel costs; interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing municipality or joint agency (provided that a period of three years shall be deemed to be reasonable for bonds issued to finance a generating unit expected to be operated to supply base load); establishment of reserves; and all other expenditures of the issuing municipality or joint agency incidental, necessary or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project and the placing of the same in operation. The term shall also mean the capital cost of ~~nuclear~~ fuel for any project.

(2a) 'Electric system' shall mean any electric power generation, transmission or distribution system.

(3) 'Governing board' shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged by law with governing the municipality, joint agency, or joint municipal assistance ~~agency.~~ agency, including any executive committee created pursuant to G.S. 159B-10.

(4) 'Joint agency' shall mean a public body and body corporate and politic organized in accordance with the provisions of Article 2 of this Chapter.

(4a) 'Joint municipal assistance agency' shall mean a public body and body corporate and politic organized in accordance with the provisions of Article 3 of this Chapter.

(5) 'Municipality' shall mean a city, town or other unit of municipal government created under the laws of the State, or any board, agency, or commission thereof, owning a system or facilities for the generation, transmission or distribution of electric power and energy for public and private uses.

(6) 'Project' shall mean any system or facilities for the generation, transmission and transformation, or any of them, of electric power and energy by any means whatsoever including, but not limited to, any one or more electric generating units situated at a particular site, or any interest in the foregoing, whether an undivided interest as a tenant in common or otherwise. Project does not mean an administrative office building or office or facilities related to the administrative office building or office.

(7) 'State' shall mean the State of North Carolina."

Sec. 3. G.S. 159B-4 reads as rewritten:

"§ *159B-4. Authority of municipalities to jointly cooperate.*

In addition and supplemental to the powers otherwise conferred on municipalities by the laws of the State, and in order to accomplish the purposes of this Chapter and to obtain a supply of electric power and energy for the present and future needs of its inhabitants and customers, a municipality may jointly or severally plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, better, own, operate and maintain a project situated within or without the State with one or more other municipalities ~~in this State owning electric distribution facilities or any political subdivisions, agencies or instrumentalities of any state contiguous to this State~~ or joint agencies created pursuant to this ~~Chapter or~~ Chapter or, in the case of projects for the generation and transmission of electric power and energy, jointly with any persons, firms, associations or corporations, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale within ~~the~~ this State or any state contiguous to the State, and may make such plans and enter into such contracts in connection therewith, not inconsistent with the provisions of this Chapter, as are necessary or appropriate.

Prior to acquiring any ~~such~~ generation project the governing board shall determine the needs of the municipality for power and energy based upon engineering studies and reports, and shall not acquire a project in excess of that amount of capacity and the energy associated therewith required to provide for its projected needs for power and energy from and after the date the project is estimated to be placed in normal continuous operation and for such reasonable period of time thereafter as shall be determined by the governing board and approved by the North Carolina Utilities Commission in a proceeding instituted pursuant to G.S. 159B-24. In determining the future power requirements of a municipality, there shall be taken into account the following:

(1) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation ~~and transmission~~ of electric power and energy;
(2) The municipality's needs for reserve and peaking capacity and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which it is or may become a party;
(3) The estimated useful life of such project;
(4) The estimated time necessary for the planning, development, acquisition or construction of such project and the length of time required in advance to obtain, acquire or construct additional power supply; and
(5) The reliability and availability of existing or alternative power supply sources and the cost of such existing or alternative power supply sources.

A determination by such governing board approved by the North Carolina Utilities Commission based upon appropriate findings of the foregoing matters shall be conclusive as to the quantity of the interest which a municipality may acquire in a generation project unless a party to the proceeding aggrieved by the determination of said Commission shall file

notice of appeal pursuant to Article 5 of Chapter 62 of the General Statutes of North Carolina.

Nothing herein contained shall prevent a municipality or municipalities from undertaking studies to determine whether there is a need for a project or whether such project is feasible."

Sec. 4. G.S. 159B-8 is repealed.

Sec. 5. G.S. 159B-9 reads as rewritten:

"*§ 159B-9. Creation of a joint agency; board of commissioners.*

(a) The governing boards of two or more municipalities may by resolution or ordinance determine that it is in the best interests of the municipalities in accomplishing the purposes of this Chapter to create a joint agency as prescribed herein for the purpose of undertaking the planning, financing, development, acquisition, construction, reconstruction, improvement, enlargement, betterment, operation and maintenance of a project or projects as an alternative or supplemental method of obtaining the benefits and assuming the responsibilities of ownership in a project.

In determining whether or not creation of a joint agency for such purpose is in the best interests of the municipalities, the governing boards shall take into consideration, but shall not be limited to, the following:

(1) Whether or not a separate entity may be able to finance the cost of projects in a more efficient and economical manner;

(2) Whether or not better financial market acceptance may result if one entity is responsible for issuing all of the bonds required for a project or projects in a timely and orderly manner and with a uniform credit rating instead of multiple entities issuing separate issues of bonds;

(3) Whether or not savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, construction, ownership and operation of a project or projects; and

(4) Whether or not the existence of such a separate entity will foster the continuation of joint planning and undertaking of projects, and the resulting economies and efficiencies to be derived from such joint planning and undertaking.

If each governing board shall determine that it is in the best interest of the municipality to create a joint agency to provide power and energy to the municipality as provided in this Chapter, each shall adopt a resolution or ordinance so finding (which need not prescribe in detail the basis for the determination), and which shall set forth the names of the municipalities which are proposed to be initial members of the joint agency. The governing board of the municipality shall thereupon by ordinance or resolution appoint one commissioner of the joint agency who may, at the discretion of the governing board, be an officer or employee of the municipality.

Any two or more commissioners so named may file with the Secretary of State an application signed by them setting forth (i) the names of all the proposed member municipalities; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment evidencing their right to office; (iv) a statement that each governing board of each respective municipality appointing a commissioner

has made the aforesaid determination; (v) the desire that a joint agency be organized as a public body and a body corporate and politic under this Chapter; and (vi) the name which is proposed for the joint agency.

The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the State to administer and certify oaths.

The Secretary of State shall examine the application and, if he finds that the name proposed for the joint agency is not identical with that of any other corporation of this State or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded as herein provided, the joint agency shall constitute a public body and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the commissioners executing the application a certificate of incorporation pursuant to this Chapter under the seal of the State, and shall record the same with the application. The certificate shall set forth the names of the member municipalities.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the joint agency, the joint agency, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

Notice of the issuance of such certificate shall be given to all of the proposed member municipalities by the Secretary of State. If a commissioner of any such municipality has not signed the application to the Secretary of State and such municipality does not notify the Secretary of State of the appointment of a commissioner within 40 days after receipt of such notice, such municipality shall be deemed to have elected not to be a member of the joint agency. As soon as practicable after the expiration of such 40-day period, the Secretary of State shall issue a new certificate of incorporation, if necessary, setting forth the names of those municipalities which have elected to become members of the joint agency. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the joint agency.

(b) After the creation of a joint agency, any other municipality may become a member thereof upon application to such joint agency after the adoption of a resolution or ordinance by the governing board of the municipality setting forth the determination and finding prescribed in paragraph (a) of this G.S. 159B-9, and authorizing said municipality to participate, and with the unanimous consent of the members of the joint agency evidenced by the resolutions of their respective governing bodies. Any municipality may withdraw from a joint agency, provided, however, that all contractual rights acquired and obligations incurred while a municipality was a member shall remain in full force and effect.

(c) The powers of a joint agency shall ~~consist of a board~~ be exercised by or under the authority of, and the business and affairs of a joint agency shall be managed under the direction of, its board of commissioners. However, all or a portion of those powers and the management of all or any part of the business and affairs of a joint agency may be exercised by an executive committee created pursuant to G.S. 159B-10. The board of commissioners shall consist of commissioners appointed by the respective governing boards of the municipalities which are members of the joint agency. Each commissioner shall have not less than one vote and may have in addition thereto such additional votes as the governing boards of a majority of the municipalities which are members of the agency shall determine. Each commissioner shall serve at the pleasure of the governing board by which ~~he~~ the commissioner was appointed. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing board of the appointing municipality and spread upon its minutes. The governing board of each of the municipalities may appoint up to two alternate commissioners to act in lieu of its appointed commissioner when the appointed commissioner is unable for any reason to attend meetings of the board of commissioners or any committee thereof, and the governing board shall designate them as first or second alternate commissioner. Each alternate commissioner shall serve at the pleasure of the governing body by which ~~he is~~ that commissioner was appointed and shall take, subscribe to and file an oath in the same manner as prescribed for regularly appointed commissioners. Such alternate commissioner when acting in lieu of the regularly appointed commissioner shall be deemed to be the commissioner of such municipality, and shall have the rights, powers and authority of the regularly appointed commissioner, including any committee function of said commissioner, other than such commissioner's position as an officer pursuant to paragraph (d) of this G.S. 159B-9. A certificate entered into the minutes of the board of commissioners of a joint agency by the clerk or other custodian of the minutes and records of the governing body of a municipality, appointing commissioners and alternate commissioners and reciting their appointments, shall constitute conclusive evidence of their appointment. The offices of commissioner, alternate commissioner, or officer of a joint agency are hereby declared to be offices which may be held by the holders of any office, place of trust or profit in addition to and concurrently with those offices permitted by G.S. 128-1.1 and other offices permitted by other General Statute.

(d) The board of commissioners of the joint agency shall annually elect one of the commissioners as chairman, another as vice-chairman, and another person or persons, who may but need not be commissioners, as treasurer, secretary, and, if desired, assistant ~~secretary,~~ secretary and assistant treasurer. The office of treasurer or assistant treasurer may be held by the secretary or assistant secretary. The board of commissioners may also appoint such additional officers as it deems necessary. The secretary or any assistant secretary of the joint agency shall keep a record of the proceedings of the joint agency, and the secretary shall be the custodian

of all records, books, documents and papers filed with the joint agency, the minute book or journal of the joint agency and its official seal. Either the secretary or the assistant secretary of the joint agency may cause copies to be made of all minutes and other records and documents of the joint agency and may give certificates under the official seal of the joint agency to the effect that such copies are true copies, and all persons dealing with the joint agency may rely upon such certificates.

(e) A majority of the commissioners of a joint agency then in office shall constitute a quorum. A vacancy in the board of commissioners of the joint agency shall not impair the right of a quorum to exercise all the rights and perform all the duties of the joint agency. Any action taken by the joint agency under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each such resolution ~~shall~~ may take effect immediately and need not be published or posted. A majority of the votes which the commissioners present are entitled to cast shall be necessary and sufficient to take any action or to pass any resolution, provided that such commissioners present are entitled to cast a majority of the votes of all commissioners of the board.

(f) No commissioner of a joint agency shall receive any compensation for the performance of his duties hereunder, provided, however, that each commissioner may be paid his necessary expenses incurred while engaged in the performance of such duties."

Sec. 6. G.S. 159B-10 reads as rewritten:

"*§ 159B-10. Executive committee, composition; powers and duties; terms.*

~~The board of commissioners of the joint agency may create an executive committee of the board of commissioners. The board may provide for the composition of the executive committee so as to afford, in its judgment, fair representation of the member municipalities. The executive committee shall have and shall exercise such of the powers and authority of the board of commissioners during the intervals between the board's meetings as shall be prescribed in the board's rules, motions and resolutions. The terms of office of the members of the executive committee and the method of filling vacancies therein shall be fixed by the rules of the board of commissioners of the joint agency.~~

(a) The board of commissioners of a joint agency may create an executive committee by resolution. The board may provide for the composition and terms of office of, and the method of filling vacancies on, the executive committee. The executive committee may include representatives of the joint agency, representatives of any other joint agency, and any other persons. The executive committee of a joint agency may simultaneously act as the executive committee of any other joint agency or agencies, or joint municipal assistance agency or agencies, if so provided by all such entities, and also may simultaneously act as the sole governing board of any joint municipal assistance agency created by two or more joint agencies pursuant to G.S. 159B-45 if so provided by all such joint agencies. An executive committee acting as the sole governing board of a joint municipal assistance agency shall not be subject to the limitations on the powers and authority of executive committees set forth in subsection (b) of this section.

(b) Except as limited by resolution of the board of commissioners creating an executive committee and except as otherwise provided in this subsection, an executive committee shall have and shall exercise all of the powers and authority of the board of commissioners creating the executive committee. However, the executive committee shall not have the power or authority to (i) amend any resolution of the board of commissioners of the joint agency relating to the creation of the executive committee or providing for its powers or authority: or (ii) adopt or amend a budget. Any rate for a joint agency adopted by an executive committee may be rejected, within 30 days following the adoption of the rate, by a vote of two-thirds in number of the commissioners representing the joint agency members affected by the rate. In the event that any rate is rejected in this manner, the executive committee shall, within 10 days following the action on the part of the commissioners, adopt a second rate for that joint agency, which may be the same rate as previously adopted. This second rate may be rejected, within 10 days following the adoption of the rate, by a vote of two-thirds in number of the commissioners representing the joint agency members affected by the rate. If a second rate adopted by the executive committee is rejected in this manner, the board of commissioners of the affected joint agency shall, acting by weighted vote, adopt a rate for the joint agency which is sufficient at least to comply with the requirements of G.S. 159B-17(b). No such rate adopted by the executive committee shall become effective so long as it is subject to rejection by commissioners of a joint agency as provided for in this subsection. However, if the executive committee determines that the establishment of a rate is required within 50 days to enable a joint agency to satisfy the requirements of G.S. 159B-17(b), the rate adopted by the executive committee shall be effective until changed by the executive committee or board of commissioners in accordance with this subsection.

(c) Each member of the executive committee shall have one vote and shall serve at the pleasure of the governing board by which the member was appointed. Before performing duties as a member, each member shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of the office faithfully and impartially, and a record of each oath shall be filed with the governing board appointing the member and spread upon its minutes. The office of a member of an executive committee may be held by the holders of any office, place of trust or profit in addition to and concurrently with those offices permitted by G.S. 128-1.1 and other offices permitted by law.

(d) The executive committee shall annually elect from its membership a chair and vice-chair, and shall elect another person or persons, who need not be members, to serve as secretary and, if desired, assistant secretary. The secretary or any assistant secretary of the executive committee shall keep a record of the proceedings of the executive committee, and the secretary shall be the custodian of all records, books, documents, and papers filed with the executive committee, as well as the minute book or journal of the executive committee. Either the secretary or the assistant secretary of the executive committee may cause copies to be made of all minutes and other records and documents of the executive committee and may give certificates of the executive committee to the effect that the copies are true

copies, and all persons dealing with the executive committee may rely upon those certificates.

(e) A majority of the members of an executive committee then serving shall constitute a quorum. A vacancy on the executive committee shall not impair the right of a quorum to exercise all the rights and perform all the duties of the executive committee. Any action taken by the executive committee under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each such resolution may take effect immediately and need not be published or posted. A vote of the majority of the members present shall be necessary and sufficient to take any action or to pass any resolution, provided that those members present are entitled to cast a majority of the votes of all members of the executive committee.

(f) Members of the executive committee, and of any subcommittee created by the executive committee, may receive compensation and be paid expenses for the performance of their duties as determined by the board or boards of commissioners creating that executive committee. However, for any member of an executive committee who is an employee of a municipality, a payment in lieu of any compensation shall be made to the municipality for distribution to the executive committee member in the manner and amount, if any, it deems appropriate. An executive committee for more than one entity may be referred to as a board of directors of any or each of those entities."

Sec. 7. G.S. 159B-11 reads as rewritten:

"*§ 159B-11. General powers of joint agencies; prerequisites to undertaking projects.*

Each joint agency shall have all of the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the rights and powers:

(1) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(2) To adopt an official seal and alter the same at pleasure;

(3) To acquire and maintain an administrative office building or office at such place or places as it may determine, which building or office may be used or owned alone or together with any other joint agency or agencies, joint municipal assistance agency, municipalities, corporations, associations or persons under such terms and provisions for sharing costs and otherwise as may be ~~determined;~~ determined;

(4) To sue and be sued in its own name, and to plead and be impleaded;

(5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

(6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal,

improved or unimproved, including an interest in land less than the fee thereof;

(7) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

(8) To pledge, assign, mortgage or otherwise grant a security interest in any real or personal property or interest therein, including the right and power to pledge, assign or otherwise grant a security interest in any money, rents, charges or other revenues and any proceeds derived by the joint agency from the sales of property, insurance or condemnation ~~awards.~~ awards;

(9) To issue bonds of the joint agency for the purpose of providing funds for any of its corporate purposes;

(10) To study, plan, finance, construct, reconstruct, acquire, improve, enlarge, extend, better, own, operate and maintain one or more projects, either individually or jointly with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter, and to pay all or any part of the costs thereof from the proceeds of bonds of the joint agency or from any other available funds of ~~made available to~~ the joint agency; no provisions of law with respect to the acquisition, construction, or operation of property by other public bodies shall be applicable to any project as defined in this Chapter and as authorized by this subdivision unless the General Assembly shall specifically so state;

(11) To authorize the construction, operation or maintenance of any project or projects by any person, ~~firm or corporation, including political subdivisions and agencies of any state, or of the United States;~~ firm, association, or corporation, public or private;

(12) To acquire by private negotiated purchase or lease or otherwise an existing project, a project under construction, or other property, either individually or jointly, with one or more municipalities or joint agencies in this State or any state contiguous to this State owning electric distribution facilities or with any political subsivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter; to acquire by private negotiated purchase or lease or otherwise any facilities for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water, and to enter into agreements by private negotiation or otherwise, for a period not exceeding fifty (50) years, for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; no provisions of law with respect to the acquisition, construction

or operation of property by other public bodies shall be applicable to any agency created pursuant to this Chapter unless the legislature shall specifically so state;

(13) To dispose of by private negotiated sale or lease, or ~~otherwise~~ otherwise, an existing ~~project,~~ project or a project under construction, or ~~other property either individually or jointly with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter;~~ to dispose of by private negotiated sale or lease, or otherwise any facilities for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; no provisions of law with respect to the disposition of property by other public bodies shall be applicable to an agency created pursuant to this Chapter unless the legislature shall specifically so state;

(14) To fix, charge and collect rents, rates, fees and charges for electric power or energy and other services, facilities and commodities sold, furnished or supplied through any ~~project;~~ project or activity permitted in this Chapter;

(15) To generate, produce, transmit, deliver, exchange, purchase, sell for resale only, electric power or energy, and to enter into contracts for any or all such purposes;

(16) To negotiate and enter into contracts for the purchase, ~~sale,~~ sale for resale only, exchange, interchange, wheeling, pooling, transmission or use of electric power and energy with ~~any municipality in this State or any other state owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any other state or with other joint agencies created pursuant to this Chapter, any electric membership corporation, any public utility, and any state, federal or municipal agency which owns electric generation, transmission or distribution facilities in this State or any other state;~~ any person, firm, association, or corporation, public or private;

(17) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this Chapter, including contracts with persons, firms, ~~corporations and others;~~ associations, or corporations, public or private;

(18) To apply to the appropriate agencies of the State, the United States or any state thereof, and to any other proper ~~agency~~ agency, for such permits, licenses, certificates or approvals as may be necessary, and to construct, maintain and operate projects and undertake other activities permitted in this Chapter in accordance with such licenses, permits, certificates or approvals, and to obtain, hold and use such licenses, permits, certificates

and approvals in the same manner as any other person or operating unit of any other person;

(19) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the joint agency and to fix and pay their compensation from funds available to the joint agency therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed;

(19a) To purchase power and energy, and services and facilities relating to the utilization of power and energy, from any source on behalf of its members and other customers and to furnish, sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to the same, to its members and other customers in such amounts, with such characteristics, for such periods of time and under such terms and conditions as the governing board ~~of commissioners~~ of the joint agency shall determine;

(19b) To provide aid and assistance to municipalities, and to act for or on behalf of any municipality, in any activity related to the development and implementation of integrated resource planning, including, but not limited to, the evaluation of resources, generating facilities, alternative energy resources, conservation and load management programs, transmission and distribution facilities, and purchased power options, and related to the development, construction and operation of supply-side and demand-side resources, and to do such other acts and things as provided in Article 3 of this Chapter as if the joint agency were a joint municipal assistance agency, and to carry out the powers granted in this Chapter in relation thereto; to provide aid and assistance to any joint municipal assistance agency in the exercise of its respective powers and functions; and

(20) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers granted to the joint agency ~~therein.~~ in this Chapter.

No joint agency shall undertake any project required to be financed, in whole or in part, with the proceeds of bonds without the approval of a majority of its members. Before undertaking any project, a joint agency shall, based upon engineering studies and reports, determine that such project is required to provide for the projected needs for power and energy of its members from and after the date the project is estimated to be placed in normal and continuous operation and for a reasonable period of time thereafter. Prior to or simultaneously with granting a certificate of public convenience and necessity for any such generation project the North Carolina Utilities Commission, in a proceeding instituted pursuant to G.S.

159B-24 of this Chapter, shall approve such determination. In determining the future power requirements of the members of a joint agency, there shall be taken into account the following:

(1) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation ~~and transmission~~ of electric power and energy;
(2) Needs of the joint agency for reserve and peaking capacity and to meet obligations under pooling and reserve-sharing agreements reasonably related to its needs for power and energy to which the joint agency is or may become a party;
(3) The estimated useful life of such project;
(4) The estimated time necessary for the planning, development, acquisition, or construction of such project and the length of time required in advance to obtain, acquire or construct additional power supply for the members of the joint agency;
(5) The reliability and availability of existing alternative power supply sources and the cost of such existing alternative power supply sources.

A determination by the joint agency approved by the North Carolina Utilities Commission based upon appropriate findings of the foregoing matters shall be conclusive as to the appropriateness of a project to provide the needs of the members of a joint agency for power and energy unless a party to the proceeding aggrieved by the determination of said Commission shall file notice of appeal pursuant to Article 5 of Chapter 62 of the General Statutes of North Carolina.

Nothing herein contained shall prevent a joint agency from undertaking studies to determine whether there is a need for a project or whether such project is feasible."

Sec. 8. G.S. 159B-12 reads as rewritten:

"*§ 159B-12. Sale of capacity and output by a joint agency; other contracts with a joint agency.*

Any municipality which is a member of the joint agency may contract to buy from the joint agency power and energy for its present or future requirements, including the capacity and output of one of more specified projects. As the creation of a joint agency is an alternative method whereby a municipality may obtain the benefits and assume the responsibilities of ownership in a project, any such contract may provide that the municipality so contracting shall be obligated to make the payments required by the contract whether or not a project is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of a project or the power and energy contracted for, and that such payments under the contract shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint agency or any other member of the joint agency under the contract or any other instrument. Any contract with respect to the sale or purchase of capacity or output of a project entered into between a joint agency and its member municipalities may also provide that if one or more of such municipalities shall default in the payment of its or their obligations with respect to the purchase of said

capacity or output, then in that event the remaining member municipalities which are purchasing capacity and output under the contract shall be required to accept and pay for and shall be entitled proportionately to and may use or otherwise dispose of the capacity or output which was to be purchased by the defaulting municipality. Notwithstanding the provisions of any other law to the contrary, any such contract with respect to the sale or purchase of capacity, output, power, or energy from a project may extend for a period not exceeding 50 years from the date a project is estimated to be placed in normal continuous operation.

~~Notwithstanding the provisions of any other law to the contrary, any such contract with respect to the sale or purchase of capacity, output, power or energy from a project may extend for a period not exceeding 50 years from the date a project is estimated to be placed in normal continuous operation.~~ Any municipality may contract with a joint agency, or may contract indirectly with a joint agency through a joint municipal assistance agency, to implement the provisions of G.S. 159B-11(19a) and (19b). Notwithstanding the provisions of any law to the contrary, including, but not limited to, the provisions of G.S. 159B-44(13), any contract between a joint agency and a municipality or a joint municipal assistance agency (or between a municipality and a joint municipal assistance agency) to ~~provide aid and assistance in the development and implementation of integrated resource planning, and the development, construction, and operation of supply-side and demand-side resources, and any contract providing for payments by any municipality directly to any joint agency (or indirectly to any joint agency through a joint municipal assistance agency) or by any joint municipal assistance agency to any joint agency for the provision of aid and assistance in the development and implementation of integrated resource planning, and the development, construction, and operation of supply-side and demand-side resources,~~ implement the provisions of G.S. 159B-11(19b) may extend for a period not exceeding 30 years; provided, that any such contract in respect of a capital project to be used by or for the benefit of a municipality shall be subject to the prior approval of the Local Government Commission of North Carolina. In reviewing any such contract for approval, said Local Government Commission shall consider the municipality's debt management procedures and policies, whether the municipality is in default with respect to its debt service obligations and such other matters as said Local Government Commission may believe to have a bearing on whether the contract should be approved. ~~Notwithstanding the provisions of any law to the contrary, the execution and effectiveness of any such contracts with respect to the sale or purchase of capacity, output, power or energy from a project, or of any contracts with respect to the purchase or disposition of power and energy and services and facilities related to the utilization of power and energy, or of any contracts with a municipality or joint municipal assistance agency to provide aid and assistance in the development and implementation of integrated resource planning, and the development, construction, and operation of supply-side and demand-side resources,~~

Notwithstanding the provisions of any law to the contrary, the execution and effectiveness of any contracts authorized by this section shall not be subject to any authorizations or approvals by the State or any agency,

commission or instrumentality or political subdivision thereof except as in this Chapter specifically required and provided.

Payments by a municipality under any contract ~~for the purchase of capacity, output, or power or energy or services and facilities related to the utilization of power and energy, from a joint agency, and payments by any municipality directly to any joint agency (or indirectly to any joint agency through a joint municipal assistance agency) under any contract or contracts to provide aid and assistance in the development and implementation of integrated resource planning, and the development, construction, and operation of supply-side and demand-side resources,~~ authorized by this section shall be made solely from the revenues derived from the ownership and operation of the electric system of said municipality and any obligation under such contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the municipality or upon any of its income, receipts, or revenues, except the revenues of its electric system, and neither the faith and credit nor the taxing power of the municipality are, or may be, pledged for the payment of any obligation under any such contract. A municipality or joint agency, pursuant to an agreement with a municipality, shall be obligated to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, activities permitted in this Chapter, facilities and commodities sold, furnished or supplied through ~~its~~ the electric system of the municipality sufficient to provide revenues adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues, including amounts sufficient to pay the principal of and interest on general obligation bonds heretofore or hereafter issued by the municipality for purposes related to its electric system.

Payments by any joint municipal assistance agency to any joint agency under any contract or ~~contracts to provide aid and assistance in the development and implementation of integrated resource planning, and the development, construction, and operation of supply-side and demand-side resources,~~ contracts authorized by this section, shall be made solely from the sources specified in such contract or contracts and no other, and any obligation under such contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the joint municipal assistance agency or upon any of its income, receipts, or revenues, ~~except such sources so specified,~~ or upon any property of any municipality with which the joint agency or joint municipal assistance agency contracts or upon any of such municipality's income, receipts, or revenues ~~except the revenues of such municipality's electric system,~~ in each case except such sources so specified. A joint municipal assistance agency shall be obligated to fix, charge and collect rents, rates, fees, and charges for providing aid and assistance sufficient to provide revenues adequate to meet its obligations under such contract.

Any municipality which is a member of a joint agency may furnish the joint agency with money derived solely from the ownership and operation of its electric system or facilities and provide the joint agency with personnel, equipment and property, both real and personal. Any municipality may also provide any services to a joint agency.

Any member of a joint agency may contract for, advance or contribute funds derived solely from the ownership and operation of its electric system or facilities to a joint agency as may be agreed upon by the joint agency and the member, and the joint agency shall repay such advances or contributions from proceeds of bonds, from operating revenues or from any other funds of the joint agency, together with interest thereon as may be agreed upon by the member and the joint agency."

Sec. 9. G.S. 159B-13 reads as rewritten:

"*§ 159B-13. Sale of excess capacity and output by a joint agency.*

A joint agency may sell or exchange the excess capacity or output of a project not then required by any of its members, for such consideration and for such period and upon such other terms and conditions as may be determined by the parties, to any ~~municipality in this State or any other state owning electric distribution facilities, to any political subdivisions, agencies or instrumentalities of any other state, to other joint agencies created pursuant to this Chapter, to any electric membership corporation or public utility authorized to do business in this State, or to any other state, federal or municipal agency which owns electric generation, transmission or distribution facilities. Provided, however, that the foregoing limitations shall not apply to the temporary sale of excess capacity and energy without the State in cases of emergency or when required to fulfill obligations under any pooling or reserve sharing agreements; provided further, however, that sales of excess capacity or output of a project to electric membership corporations, public utilities, and other persons, the interest on whose securities and other obligations is not exempt from taxation by the federal government, shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government.~~ person, firm, association, or corporation, public or private."

Sec. 10. G.S. 159B-14 reads as rewritten:

"*§ 159B-14. Bonds of a joint agency.*

A joint agency may issue bonds for the purpose of paying the cost of a project and secure both the principal of and interest on the bonds by a pledge of part or all of the revenues derived or to be derived from all or any of its projects, and any additions and betterments thereto or extensions thereof, or from the sale of power and energy and services and facilities related to the utilization of power and energy, or from other activities or facilities permitted in this Chapter, or from contributions or advances from its members. A joint agency may issue bonds that are not for the purpose of paying the cost of a project and secure the bonds solely by a pledge of revenues, solely by a security interest in real or personal property, or by both a pledge of revenues and a security interest in real or personal property. Bonds of a joint agency shall be authorized by a resolution adopted by its governing board and spread upon its minutes."

Sec. 11. G.S. 159B-15 reads as rewritten:

"*§ 159B-15. Issuance of bonds.*

(a) Each municipality and joint agency is hereby authorized to issue at one time or from time to time its bonds for the purpose of paying all or any part of the cost of any of the purposes herein authorized. The principal of,

premium, if any, and the interest on bonds issued to pay the cost of a project shall be payable solely from revenues. Bonds that are not issued to pay the cost of a project shall be payable from revenues, from property pledged as security for the bonds, or from both.

The bonds of each issue shall bear interest at such rate or rates as may be determined or provided for by the Local Government Commission of North Carolina with the approval of the ~~issuer, provided that the issuer or the Local Government Commission may by contract provide for the establishment and revision by an agent from time to time of interest rates on bonds that bear interest at a variable rate,~~ issuer. The bonds of each issue shall be dated and shall mature in such amounts and at such time or times, not exceeding 50 years from their respective date or dates, as may be determined by the governing board of the issuer, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the governing board of the issuer prior to the issuance of the bonds. The governing board of the issuer shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The governing board of the issuer may also provide for the authentication of the bonds by a trustee or fiscal agent appointed by the issuer, or by an authenticating agent of any such trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the governing board of the issuer may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. At the election of a joint agency, any bonds issued and sold in accordance with the provisions of this Chapter may be purchased or otherwise acquired by the joint agency and held by it in lieu of cancellation, and subsequently ~~resold in accordance with the provisions of this Chapter,~~ resold.

(a1) Notwithstanding anything in this Chapter to the contrary, ~~in the case of short-term notes or other obligations (including commercial paper) maturing not later than one year from their date or dates,~~ the Local Government Commission of North Carolina and the issuer (i) may authorize officers or employees of either or both thereof to fix principal amounts, maturity dates, interest rates or methods of fixing interest rates, interest payment dates, denominations, redemption rights of the issuer or holder, places of payment of principal and interest, and purchase prices of any ~~such notes or other obligations,~~ bonds, to sell and deliver any ~~such notes~~ bonds in whole or in part at one time or from time to time, and to fix other matters and procedures necessary to complete the transactions authorized, all subject

to such limitations as may be prescribed by the Local Government Commission with the approval of the issuer, (ii) may approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase ~~notes or other obligations~~ bonds and any other transactions to provide security to assure, timely payment of ~~notes or other obligations,~~ bonds, (iii) may employ one or more persons or firms to assist in the sale of the ~~notes or other obligations~~ bonds and appoint one or more banks, trust companies or any dealer in ~~notes or other obligations,~~ bonds, within or without the State, as depository for safekeeping and as agent for the delivery and payment of the ~~notes or other obligations,~~ bonds, and (iv) may provide for the payment of fees and expenses in connection with the foregoing either from the proceeds of the ~~notes or other obligations~~ bonds or from other available funds.

(b) The proceeds of the bonds of each issue shall be used solely for the purposes for which such bonds have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the governing board of the issuer may provide in the resolution authorizing the issuance of such bonds or in any trust agreement securing the same. The municipality or joint agency may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The municipality or joint agency may also provide for the replacement of any bonds which shall have become mutilated or shall have been destroyed or lost.

(c) Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in G.S. 159B-24 of this Chapter, the consent of the State or of any political subdivision, or of any agency, commission or instrumentality of either thereof, and without any other approvals, proceedings or the happening of any conditions or things other than those approvals, proceedings, conditions or things which are specifically required by this Chapter and the provisions of the resolution authorizing the issuance of such bonds or the trust agreement securing the same."

Sec. 12. G.S. 159B-16 reads as rewritten:

"*§ 159B-16. Resolution or trust agreement.*

In the discretion of the governing board of the issuer, any bonds issued under the provisions of this Chapter may be secured by a trust agreement by and between the issuer and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee as may be reasonable and proper and not in violation of law, and may restrict the individual right of action by bondholders. The trust agreement or the resolution providing for the issuance of such bonds may contain covenants including, but not limited to, the following:

(1) The pledge of all or any part of the revenues derived or to be derived from the project or projects to be financed by the bonds, or from the sale or other disposition of power and energy and services and facilities related to the utilization of power and

energy, or from other services or activities permitted in this Chapter, or from contributions and advances from members of a joint agency, or from the electric system or other facilities of a municipality or a joint agency.

(2) The rents, rates, fees and charges to be established, maintained, and collected, and the use and disposal of revenues, gifts, grants and funds received or to be received by the municipality or joint agency.

(3) The setting aside of reserves and the investment, regulation and disposition thereof.

(4) The custody, collection, securing, investment, and payment of any moneys held for the payment of bonds.

(5) Limitations or restrictions on the purposes to which the proceeds of sale of bonds then or thereafter to be issued may be applied.

(6) Limitations or restrictions on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; or the refunding of outstanding or other bonds.

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the bondholders of which must consent thereto, and the manner in which such consent may be given.

(8) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which bonds issued under this Chapter shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

(9) The preparation and maintenance of a budget.

(10) The retention or employment of consulting engineers, independent auditors, and other technical consultants.

(11) Limitations on or the prohibition of free service to any person, firm or corporation, public or private.

(12) The acquisition and disposal of property, provided that no project or part thereof shall be mortgaged by such trust agreement or resolution.

(13) Provisions for insurance and for accounting reports and the inspection and audit thereof.

(14) The continuing operation and maintenance of the ~~project.~~ project or other facilities.

(15) For bonds that are not issued to pay the cost of a project, the pledge, assignment, mortgage, or grant of a security interest in any real or personal property or interest in real or personal property, including the pledge, assignment, or grant of a security interest in money, rents, charges, or other revenues or proceeds derived by the joint agency from the sale of property, from insurance, or from a condemnation award. In the event of default on a bond secured by a pledge, assignment, mortgage, or grant of a security interest, the rights of the bond holders and the liabilities arising from the default shall be limited, except to the extent provided in a pledge of revenues, to the specific property

or interest in property pledged, assigned, or mortgaged or in which a security interest was granted to secure the bonds, and no claim for any deficiency shall be made nor any deficiency judgment entered as a result of the pledge, assignment, mortgage, or grant of a security interest in the property or the interest in property."

Sec. 13. G.S. 159B-17 reads as rewritten:

"*§ 159B-17. Revenues.*

(a) A municipality is hereby authorized to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of its electric system or its interest in any joint project. For so long as any bonds of a municipality are outstanding and unpaid, the rents, rates, fees and charges shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its electric system, and its interest in any joint project, and all necessary repairs, replacements or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds and other evidences of indebtedness payable from said revenues, to create and maintain reserves as may be required by any resolution or trust agreement authorizing and securing bonds, to pay when due the principal of, premium, if any, and interest on all general obligation bonds heretofore or hereafter issued to finance additions, improvements and betterments to its electric system, and to pay any and all amounts which the municipality may be obligated to pay from said revenues by law or contract.

(b) A joint agency is hereby authorized to fix, charge, and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of its projects or otherwise as authorized by this Chapter. For so long as any bonds of a joint agency are outstanding and unpaid, the rents, rates, fees and charges shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects, and all necessary repairs, replacements or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds and other evidences of indebtedness payable from said revenues, to create and maintain reserves as may be required by any resolution or trust agreement authorizing and securing bonds, and to pay any and all amounts which the joint agency may be obligated to pay from said revenues by law or contract.

(c) Any pledge of revenues, securities or other moneys made by a municipality, joint agency or joint municipal assistance agency pursuant to this Chapter shall be valid and binding from the date the pledge is made. The revenues, securities, and other moneys so pledged and then held or thereafter received by the municipality, joint agency or joint municipal assistance agency or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the municipality, joint agency or joint municipal assistance agency without regard to whether such

parties have notice thereof. The resolution or trust agreement or any financing statement, continuation statement or other instrument by which a pledge of revenues, securities or other moneys is created need not be filed or recorded in any manner."

Sec. 14. G.S. 159B-18 reads as rewritten:

"*§ 159B-18. Trust funds; investment authority.*

(a) Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide that any of such moneys may be temporarily invested and reinvested pending the disbursements thereof in such securities and other investments as shall be provided in such resolution or trust agreement, and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall ~~act as trustee of such moneys and shall~~ hold and apply the same for the purposes hereof, subject to such regulation as this Chapter and such resolution or trust agreement may provide.

(b) Any moneys received pursuant to the authority of this Chapter and any other moneys available to a joint agency for investment may be invested:

(1) As provided in subsection (a) of this section;

(2) As provided in G.S. 159-30, except that:

a. A joint agency may also invest, in addition to the obligations enumerated in G.S. 159-30(c)(2), in bonds, debentures, notes, participation certificates, or other evidences of indebtedness issued, or the principal of and the interest on which are unconditionally guaranteed, whether directly or indirectly, by any agency or instrumentality of, or corporation wholly owned by, the United States of America.

b. For purposes of G.S. 159-30(c)(12), a joint agency may also enter into repurchase agreements with respect to, in addition to the obligations enumerated in G.S. 159-30(c)(12):

1. Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, and the United States Postal Service;

2. Bonds, debentures, notes, participation certificates, or other evidences of indebtedness issued, or the principal of and the interest on which are unconditionally guaranteed, whether directly or indirectly, by any agency or instrumentality of, or corporation wholly owned by, the United States of America;

3. Mortgage-backed pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association;
4. Direct or indirect obligations which are collateralized by or represent beneficial ownership interests in mortgage-backed pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association; and
5. Direct or indirect obligations, trust certificates, or other similar instruments which are both: (i) guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association; (ii) collateralized by or represent beneficial ownership interests in mortgage-backed pass-through securities which are guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association, including, but not limited to, Real Estate Mortgage Investment Conduit Certificates; and (iii) for purposes of the second proviso of G.S. 159-30(c)(12)a., the financial institution serving either as trustee or as fiscal agent for a joint agency holding the obligations subject to the repurchase agreement may also be the provider of the repurchase agreement if the obligations that are subject to the repurchase agreement are held in trust by the trustee or fiscal agent for the benefit of the joint agency;

(3) In mortgage-backed pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association;

(4) In direct or indirect obligations which are collateralized by or represent beneficial ownership interests in mortgage-backed pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association; and

(5) In direct or indirect obligations, trust certificates, or other similar instruments which are (i) guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association, and (ii) collateralized by or represent beneficial ownership interests in mortgage-backed pass-through securities which are guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association, including, but not limited to, Real Estate Mortgage Investment Conduit Certificates."

Sec. 15. G.S. 159B-24 reads as rewritten:

"*§ 159B-24. Approval and sale of bonds.*

Prior to the acquisition or the commencement of construction of any project consisting of a system or facilities for the generation of power and energy which is to be financed by the issuance of bonds under the provisions of this Chapter, the participating municipalities or joint agency, as the case may be, shall first obtain a certificate of public convenience and necessity and, in the same proceeding, the approval required by G.S. 159B-4 hereof, in the case of the participating municipalities, or the approval required by G.S. 159B-11 hereof, in the case of a joint agency, from the North Carolina Utilities Commission under such rules, regulations and procedures as the Commission may prescribe.

No municipality or joint agency shall issue any bonds pursuant to this Chapter unless and until, and only to the extent that, the issuance of such bonds is approved by the Local Government Commission. A participating municipality or joint agency shall file with the secretary of the Local Government Commission an application for Commission approval of the issuance of the bonds upon such form as the said Commission may prescribe, which form shall provide for the submission of such information as the secretary may require concerning the proposed bond issue, the details thereof and the security therefor. Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference at which time the secretary and his deputies may informally discuss the details of the proposed issue and the security therefor.

After an application in proper form has been filed, and after a preliminary conference if one is required, the secretary shall notify the municipality or joint agency in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the municipality or joint agency, as the case may be, has complied with the requirements of this section with respect to the filing of an application for approval by the said Local Government Commission.

In determining whether a proposed bond issue shall be approved, the Commission may consider:

(1) The municipality's or joint agency's debt management procedures and policies.

(2) Whether the municipality or joint agency is in default with respect to any of its debt service obligations.

(3) Whether, based upon feasibility reports submitted to it, the probable revenues of the project to be financed or the revenues of the municipality's electric system, as the case may be, will be sufficient to service the proposed bonds.

The Commission may inquire into and give consideration to any other matters that it may believe to have a bearing on whether the issue should be approved except matters which are expressly required by the provisions of this Chapter to be determined by the North Carolina Utilities Commission.

The Commission shall approve the application if, upon the information and evidence it receives, it finds and determines:

(1) That, based upon engineering studies and feasibility reports submitted to it, the principal amount of the proposed bonds will be adequate and not excessive for the proposed purpose of the issue.
(2) That the municipality's or joint agency's debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.
(3) That the requirements of this Chapter with respect to the issuance of the bonds and the details thereof and security therefor have been, or will be, satisfied.
(4) That the issuance of the proposed bonds will effectuate the purposes and policies of this Chapter.

After considering an application, the Local Government Commission shall enter its order either approving or denying the application. An order approving an issue shall not be regarded as an approval of the legality of the bonds in any respect.

If the Commission enters an order denying the application, the proceedings under this section shall be at an end.

At any time after the Commission approves an application for the issuance of bonds, the governing board of the issuer may adopt a bond resolution or enter into a trust agreement in accordance with the provisions of this Chapter, and may thereafter at one time, or from time to time, issue the bonds as provided herein.

Upon the filing with the Local Government Commission of a resolution of the issuer requesting that its bonds be sold, such bonds may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission shall determine to be for the best interest of the issuer and effectuate best the purposes of this Chapter, provided that such sale shall be approved by the issuer.

Except as herein expressly provided, bonds may be issued and sold under the provisions of this Chapter without obtaining the approval or consent of any other department, division, commission, board, bureau or agency of the State, and without any other proceeding or the happening of any other condition or thing than those proceedings, conditions or things which are specifically required by this Chapter."

Sec. 16. G.S 159B-25 reads as rewritten:

"§ *159B-25. Refunding bonds.*

(a) A municipality or joint agency is hereby authorized to provide by resolution for the issuance of refunding bonds of the municipality or joint agency for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds.

(b) In addition to any refunding bonds that may be issued pursuant to subsection (a), a municipality or joint agency is hereby authorized to provide by resolution for the issuance of refunding bonds for the purpose of providing for the payment of any interest accrued or to accrue on any bonds which shall have been issued by the joint agency under the provisions of ~~the~~ this Chapter; provided, however, that the refunding bonds are issued on or

prior to June 30, 1992, and the latest maturity of the refunding bonds issued for a project is no later than the latest maturity of any other bonds issued by the municipality or joint agency, as the case may be, then outstanding for the same project; and provided further that the Local Government Commission shall conduct an evidentiary hearing and upon the evidence presented find and determine that:

(1) The municipality's or the joint agency's debt will be managed in strict compliance with law;

(2) The requirements of this Chapter with respect to the issuance of its ~~bond~~ bonds and the details thereof and security therefor have been and will be satisfied;

(3) The estimated revenues of the project or the revenues of the municipality's electric system, as the case may be, will be sufficient to service all bonds to be outstanding after the issuance of the refunding bonds;

(4) The application of the proceeds of the refunding bonds will result in the deferral of recovery in rates of a portion of the capital costs of the project for a reasonable period of time;

(5) All capital costs of the project will be recovered over a period ending, and all bonds issued for the project will mature, no later than the end of the then estimated useful economic life of the project;

(6) The issuance of the bonds is in the best interest of the municipality's or joint agency's electricity customers; and

(7) The bond rating of the State and its several political subdivisions and agencies allowed to issue bonds should not be adversely affected.

(c) The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the municipality or joint agency in respect to the same shall be governed by the provisions of this Chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate ~~thereof.~~ thereto."

Sec. 17. G.S. 159B-27 reads as rewritten:

"§ *159B-27. Taxes; payments in lieu of taxes.*

(a) A project jointly owned by municipalities or owned by a joint agency shall be exempt from property taxes; provided, however, that each municipality possessing an ownership share of a project, and a joint agency owning a project, shall, in lieu of property taxes, pay to any governmental body authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of a project if such project were otherwise subject to valuation and assessment by the Department of Revenue. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as in the cases of taxes on other property. Payments in lieu of taxes made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law. Any administrative building and associated land shall be deemed a project for purposes of this paragraph.

(b) Each municipality having an ownership share in a project shall pay to the State in lieu of an annual franchise or privilege tax an amount equal to

three and twenty-two hundredths percent (3.22%) of that percentage of all moneys expended by said municipality on account of its ownership share, including payment of principal and interest on bonds issued to finance such ownership share, which is equal to the percentage of such city or town's total entitlement that is used or sold by it to any person, firm or corporation exempted by law from the payment of the tax on gross receipts pursuant to G.S. 105-116.

(c) In lieu of an annual franchise or privilege tax, each joint agency shall pay to the State an amount equal to three and twenty-two hundredths percent (3.22%) of the gross receipts from sales of electric power or energy, less receipts from sales of electric power or energy to a vendee subject to tax under G.S. 105-116.

(d) The State shall distribute to cities and towns which receive electric power and energy from their ownership share of a project or to which electric power and energy is sold by a joint agency an amount equal to a tax of three and nine hundredths percent (3.09%) of all moneys expended by a municipality on account of its ownership share of a project, including payment of principal and interest on bonds issued to finance such ownership share, or an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from all sales of electric power and energy to such city or town by a joint agency, as the case may be.

(e) The reporting, payment and collection procedures contained in G.S. 105-116 shall apply to the levy herein made.

(f) Except as herein expressly provided with respect to jointly owned projects or projects owned by a joint ~~agency~~ agency, no other property of a municipality used or useful in the generation, transmission and distribution of electric power and energy shall be subject to payments in lieu of taxes."

Sec. 18. G.S. 159B-29 reads as rewritten:

"§ *159B-29. Dissolution of joint agencies.*

Whenever the governing board ~~of commissioners~~ of a joint agency and the governing boards of its member municipalities shall by resolution or ordinance determine that the purposes for which the joint agency was formed have been substantially fulfilled and that all bonds theretofore issued and all other obligations theretofore incurred by the joint agency have been fully paid or satisfied, ~~such board of commissioners and~~ the governing ~~boards~~ board of the joint agency may by resolution declare the joint agency to be dissolved. On the effective date of such resolution ~~or ordinance,~~ declaring the joint agency to be dissolved, the title to all funds and other property owned by the joint agency at the time of such dissolution shall vest in the member municipalities of the joint agency as provided in this Chapter and the bylaws of the joint agency. Notice of such dissolution shall be filed with the Secretary of State."

Sec. 19. G.S. 159B-30.1 reads as rewritten:

"§ *159B-30.1. Additional reports.*

Beginning ~~January 1, 1994,~~ March 1, 1996, and annually thereafter, each joint agency operating under the authority of Chapter 159B of the General Statutes shall file a report with the Joint Legislative Utility Review Committee describing the activities of the joint agency carried out pursuant to the authority granted by G.S. 159B-2, 159B-11(19b), 159B-12 and 159B-

17(c). The report shall cover the preceding calendar year. Each joint agency shall file such additional reports as the Joint Legislative Utility Review Committee shall request."

Sec. 20. G.S. 159B-34 reads as rewritten:

"§ *159B-34. Liability and defense.*

(a) No commissioner or officer of any joint agency or ~~municipality~~ municipality, or member of an executive committee created pursuant to G.S. 159B-10, or person or persons acting in their ~~behalf~~ behalf, while acting within the scope of their authority, shall be subject to any personal liability or accountability by reason of his carrying out any of the powers expressly or impliedly given in this Chapter.

(b) The governing board ~~of commissioners~~ of a joint agency may provide for the defense of a criminal or civil proceeding brought against any current or former commissioner, member of an executive committee, officer, agent or employee either in his official or individual capacity, or both, on account of any act done or omission made in the scope and course of his employment or duty as a commissioner, member of an executive committee, officer, agent, or employee of the joint agency. The defense may be provided by the agency by its own counsel, by employing other counsel or by purchasing insurance which requires that the insurer provide the defense.

(c) The governing board ~~of commissioners~~ may appropriate funds for the purpose of paying all or part of a claim made or any civil judgment entered against any of its current or former commissioners, members of executive committees, officers, agents or employees, when such claim is made or such judgment is rendered as damages on account of any act done or omission made ~~or~~ in the scope and course of his current or former employment or duty as a commissioner, member of an executive committee, officer, agent or employee; provided, however, that nothing in this section shall authorize any joint agency to appropriate funds for the purpose of paying any claim made or civil judgment entered against any current or former commissioners, members of executive committees, officers, agents or employees if the board of commissioners finds that commissioner, member of an executive committee, officer, agent or employee acted or failed to act because of actual fraud, corruption or actual malice on his part. Any joint agency may purchase insurance coverage for payment of claims or judgments pursuant to this section."

Sec. 21. G.S. 159B-42 reads as rewritten:

"§ *159B-42. Joint municipal assistance agencies.*

The purpose of this Article is to authorize joint agencies or municipalities to form one or more joint municipal assistance agencies which shall be empowered to provide aid and assistance to municipalities in the construction, ownership, maintenance, expansion and operation of their electric systems, to do such other acts and things as hereinafter provided and to carry out the powers and responsibilities hereinafter granted in this Chapter. It shall also be the purpose of a joint municipal assistance agency to provide aid and assistance to any joint agency in the exercise of its respective powers and functions. The term 'provide aid and assistance' shall be liberally construed."

Sec. 22. G.S. 159B-43 reads as rewritten:

"*§ 159B-43. Joint municipal assistance agencies authorized.*

(a) Any two or more ~~municipalities~~ joint agencies, or any two or more municipalities, may organize a joint municipal assistance agency, which shall be a public body and body corporate and politic. Any joint agency or municipality is hereby authorized to become a member of any such joint municipal assistance agency upon a determination, by resolution or ordinance of its governing board, that economies, efficiencies and other benefits might be achieved from participation in such an agency.

The resolution or ordinance determining it desirable for a joint agency or municipality to become a member of a joint municipal assistance agency (which need not prescribe in detail the basis for the determination) shall set forth the names of the joint agencies or municipalities which are proposed to be initial members of the joint municipal assistance agency. The governing board of the joint agency or municipality shall thereupon by ordinance or resolution appoint one commissioner and up to two alternate commissioners of the joint municipal assistance agency who may, at the discretion of the governing board, be an officer or employee of the joint agency or municipality. If two alternate commissioners are appointed, the governing board shall designate them as first or second alternate commissioner.

Any two or more commissioners so named may file with the Secretary of State an application signed by them setting forth (i) the names of all the proposed member joint agencies or municipalities; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment evidencing their right to office; (iv) a statement that each governing board of each respective joint agency or municipality appointing a commissioner has made the aforesaid determination; (v) the desire that a joint municipal assistance agency be organized as a public body and a body corporate and politic under this Chapter; and (vi) the name which is proposed for the joint municipal assistance agency.

The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the State to administer and certify oaths.

The Secretary of State shall examine the application and, if he finds that the name proposed for the joint municipal assistance agency is not identical with that of any other corporation of this State or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded as herein provided, the joint municipal assistance agency shall constitute a public body and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the commissioners executing the application a certificate of incorporation pursuant to this Chapter under the seal of the State, and shall record the same with the application. The certificate shall set forth the names of the member municipalities.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the joint municipal assistance agency, the joint municipal assistance agency, in the absence of establishing fraud in the

premises, shall be conclusively deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate or of any new or supplemental certificate hereinafter provided for, duly certified by the Secretary of State, shall be admissible in evidence in any suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

Notice of the issuance of such certificate shall be given to all of the proposed member joint agencies or municipalities by the Secretary of State. If a commissioner of any such joint agency or municipality has not signed the application to the Secretary of State and such joint agency or municipality does not notify the Secretary of State of the appointment of a commissioner within 60 days after receipt of such notice, such joint agency or municipality shall be deemed to have elected not to be a member of the joint municipal assistance agency. As soon as practicable after the expiration of such 60-day period, the Secretary of State shall issue a new certificate of incorporation, if necessary, setting forth the names of those joint agencies or municipalities which have elected to become members of the joint municipal assistance agency. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the joint municipal assistance agency.

(b) After the creation of a joint municipal assistance agency, any other joint agency (if organized by joint agencies) or municipality (if organized by municipalities) may become a member thereof upon application to such joint municipal assistance agency after the adoption of a resolution or ordinance by the governing board of the joint agency or municipality setting forth the determination and finding prescribed above for the original members and authorizing said municipality to become a member and appointing a one commissioner, and with the consent of a majority of the board of commissioners of the joint municipal assistance agency. Any joint agency or municipality may withdraw from a joint municipal assistance agency, provided, however, that all obligations incurred by a joint agency or municipality while it was a member shall remain in full force and effect. Notice that a joint agency or municipality has been added to or withdrawn from membership in the joint municipal assistance agency shall be filed with the Secretary of State, and the Secretary of State shall thereupon issue a new or supplemental certificate of incorporation setting forth the names of all members of the joint municipal assistance agency. Additions of new members or withdrawal of members shall not affect the validity of the corporate existence of the joint municipal assistance agency.

(c) The joint municipal assistance agency ~~shall~~ may be governed by a board of commissioners appointed as provided in ~~subsection (a) above by the respective governing boards of the municipalities which are members of the joint municipal assistance agency.~~ subsections (a) and (b) of this section. It shall not be necessary to notify the Secretary of State of the appointment of any commissioners following the notifications referred to in subsections (a) and (b) ~~above.~~ of this section. Each commissioner shall have one vote and shall serve at the pleasure of the governing board by which he was appointed. Each appointed commissioner before entering upon his duties

shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing board of the appointing joint agency or municipality and spread upon its minutes. The governing board of each of the joint agencies or municipalities may appoint up to two alternate commissioners to act in lieu of its appointed commissioner when the appointed commissioner is unable for any reason to attend meetings of the board of commissioners or any committee thereof, and the governing board shall designate them as first or second alternate commissioner. Each alternate commissioner shall serve at the pleasure of the governing board by which he is appointed and shall take, subscribe to and file an oath in the same manner as prescribed for regularly appointed commissioners. Such alternate commissioner when acting in lieu of the regularly appointed commissioner shall be deemed to be the commissioner representing such joint agency or municipality, and shall have the rights, powers and authority of the regularly appointed commissioner, other than such commissioner's position as an officer, director or member of the executive committee. A certificate entered into the minutes of the board of commissioners of a joint agency by the clerk or other custodian of the minutes and records of the governing body of a municipality, appointing commissioners and alternate commissioners and reciting their appointments, shall constitute conclusive evidence of their appointment. All powers, functions, rights and privileges of the joint municipal assistance agency shall be exercised or delegated by the board of commissioners.

(d) The board of commissioners of the joint municipal assistance agency shall annually elect one of the commissioners as president, another as vice president, and another person or persons, who may but need not be commissioners, as treasurer, secretary, and, if desired, assistant secretary or secretaries and assistant treasurer. The office of treasurer or assistant treasurer may be held by the secretary or any assistant secretary. The board of commissioners may also appoint and prescribe the duties of such additional officers as it deems necessary. The secretary or any assistant secretary of the joint municipal assistance agency shall keep a record of the proceedings of the joint municipal assistance agency, and the secretary shall be the custodian of all records, books, documents and papers filed with the joint municipal assistance agency, the minute book or journal of the joint municipal assistance agency and its official seal. Either the secretary or any assistant secretary of the joint municipal assistance agency may cause copies to be made of all minutes and other records and documents of the joint municipal assistance agency and may give certificates under the official seal of the joint municipal assistance agency to the effect that such copies are true copies, and all persons dealing with the joint municipal assistance agency may rely upon such certificates.

(e) Fifty-one percent (51%) of the commissioners of a joint municipal assistance agency then in office shall constitute a quorum, and the commissioners may by written consent executed before or after any meeting waive notice and all other formalities incident to the calling or conduct of the same. Meetings of the commissioners may be held at any place within the State or any state contiguous to the State. A vacancy in the board of

commissioners of the joint municipal assistance agency shall not impair the right of a quorum to exercise all the rights and perform all the duties of the joint municipal assistance agency. Any action taken by the joint municipal assistance agency under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each such resolution ~~shall~~ may take effect immediately and need not be published or posted. Except as specifically provided by the bylaws, a majority of the votes of the commissioners present shall be necessary and sufficient to take any action or to pass any resolution.

(f) The board of commissioners of the joint municipal assistance agency may, in its bylaws, provide for a board of directors of the joint municipal assistance agency to be selected from the commissioners and alternate commissioners. The board of directors shall have and exercise such of the powers and authority of the board of commissioners during the intervals between the board of commissioners' meetings as shall be prescribed in the bylaws, rules, motions and resolutions of the board of commissioners. The terms of office of the members of the board of directors and the method of filling vacancies therein shall be fixed by the bylaws of the board of commissioners of the joint municipal assistance agency. The bylaws of the joint municipal assistance agency shall provide that the officers of the board of commissioners elected pursuant to subsection (d) of this section must also serve on the board of directors and hold the same offices thereon.

(g) The board of commissioners may also provide, in its bylaws or otherwise, that the board of directors shall create an executive committee of the board of directors composed of the officers of the board of directors, together with such other members of the board of directors as may be prescribed and that such executive committee shall have and shall exercise such of the powers and authority of the board of directors during the intervals between that board's meetings as shall be prescribed in the bylaws of the joint municipal assistance agency or in the rules or resolutions of the board of directors.

(h) The board of commissioners, board of directors and executive committee may provide or adopt methods and procedures consistent with other applicable laws for the calling or conducting of meetings or the taking of any action.

(i) No commissioner or director of a joint municipal assistance agency shall receive any compensation for the performance of his or her duties hereunder, provided, however, that each commissioner and director may be paid his or her necessary expenses incurred while engaged in the performance of such duties."

Sec. 23. Chapter 159B of the General Statutes is amended by adding a new section to read:

"*§ 159B-43.1. Alternative to board of commissioners.*

(a) In lieu of the provisions of G.S. 159B-43(c) through (i), a joint municipal assistance agency organized by two or more joint agencies, by resolutions adopted by each of those joint agencies, may be governed by an executive committee created pursuant to the provisions of G.S. 159B-10. In that case, the commissioners of the joint municipal assistance agency appointed pursuant to the provisions of G.S. 159B-43(a) and (b) shall adopt

a resolution substantially identical to the resolutions adopted by the joint agencies creating the executive committee. The terms of office, methods of filling vacancies, and such other matters involving the executive committee shall be as set forth in those resolutions.

(b) In connection with a joint municipal assistance agency governed pursuant to the provisions of subsection (a) of this section, member municipalities of that joint municipal assistance agency which are not members of the joint agencies organizing that joint municipal assistance agency and nonmunicipal members, as defined in G.S. 159B-50, may elect members to the executive committee pursuant to those procedures as they agree upon among themselves, but subject to the following: if the number of the member municipalities and nonmunicipal members is seven or less, those municipalities and nonmunicipal members, acting jointly, may appoint one member to the executive committee, and if the number of the member municipalities and nonmunicipal members is more than seven, those member municipalities and nonmunicipal members, acting jointly, may appoint two members to the executive committee.

(c) Members of the executive committee appointed by the member municipalities and nonmunicipal members, and members of any subcommittee created by those member municipalities and nonmunicipal members, may receive compensation, and be paid expenses, for the performance of their duties as determined by the member municipalities and nonmunicipal members appointing those members. However, for any member of an executive committee who is an employee of a member municipality or nonmunicipal member, a payment in lieu of any compensation shall be made to the member municipality or nonmunicipal member for distribution to the executive committee member in the manner and amount, if any, it deems appropriate."

Sec. 24. G.S. 159B-44(8) reads as rewritten:

"(8) To acquire and maintain an administrative office building or office at such place or places as it may determine, which building or office may be used or owned together with any joint agency or agencies, municipalities, corporations, associations or persons under such terms and provisions for sharing costs and otherwise as may be determined;".

Sec. 25. G.S. 159B-45 reads as rewritten:

"*§ 159B-45. Dissolution.*

Whenever the governing board of a joint municipal assistance agency and the governing boards of its member joint agencies or municipalities shall by resolution or ordinance determine that the purposes for which the joint municipal assistance agency was formed have been substantially fulfilled and that all obligations incurred by the joint municipal assistance agency have been fully paid or satisfied, ~~such~~ the governing ~~boards may declare~~ board of the joint municipal assistance agency may by resolution declare the joint municipal assistance agency to be dissolved. On the effective date of such resolution ~~or ordinance,~~ declaring the joint agency to be dissolved, the title to all funds and other property owned by the joint municipal assistance agency at the time of such dissolution shall vest in the members of the joint municipal assistance agency as provided in this Chapter and the bylaws of

the joint municipal assistance agency. Notice of such dissolution shall be filed with the Secretary of State."

Sec. 26. G.S. 159B-46 reads as rewritten:

"§ *159B-46. Reports, liability, and personnel.*

(a) Each joint municipal assistance agency shall, following the closing of each fiscal year, submit an annual report of its activities for the preceding year to the governing boards of its members. Each such report shall set forth an operating and financial statement covering the operations of the joint municipal assistance agency during such year. The joint municipal assistance agency shall cause an audit of its books of record and accounts to be made at least once in each year by independent certified public accountants.

(b) No commissioner, alternate commissioner or director or officer of any joint municipal assistance ~~agency or officer of any municipality~~ agency, member of an executive committee created pursuant to G.S. 159B-10, officer of any joint agency or municipality, or person or persons acting in their behalf, while acting within the scope of his authority, shall be subject to any personal liability or accountability by reason of his carrying out any of the powers expressly or impliedly given in this Article.

(c) Each municipality, joint agency and joint municipal assistance agency shall be severally liable for its own acts or omissions and not jointly or severally liable for the acts, omissions, or obligations of others, including other municipalities.

(d) In no event shall any municipality or joint agency be liable or responsible for any acts, omissions or obligations of any joint municipal assistance agency or any of its officers, members of an executive committee, employees or agents; provided, however, that contracts between the joint municipal assistance agency and one or more municipalities or one or more joint agencies may expressly provide for the imputation of or indemnification for any liability of one party thereto by the other, or for the assumption of any obligation of one party thereto by the other.

(e) Personnel employed or appointed by a municipality and performing services for or on behalf of a joint municipal assistance agency shall have the same authority, rights, privileges and immunities (including coverage under the workers' compensation laws) which the officers, agents and employees of the appointing municipality enjoy within the territory of that municipality, whether within or without the territory of the appointing municipality, when they are acting within the scope of their authority or in the course of their employment.

(f) Personnel employed or appointed by a joint municipal assistance agency shall be qualified for participation in the North Carolina Local Government Employees' Retirement System with the same rights, privileges, obligations and responsibilities as they would have if they were employees of a municipality.

(g) The offices of commissioner, alternate commissioner, officer, director and member of the executive committee of a joint municipal assistance agency are hereby declared to be offices which may be held by the holder of any office, place of trust or profit in addition to and concurrently with those

offices permitted by G.S. 128-1.1 and other offices permitted by other General Statute."

Sec. 27. G.S. 159B-47 reads as rewritten:

"§ *159B-47. Defense.*

(a) The board of commissioners of a joint municipal assistance agency may provide for the defense of a criminal or civil proceeding brought against any current or former commissioner, member of an executive committee, director, officer, agent or employee either in his official or individual capacity, or both, on account of any act done or omission made in the scope and course of his employment or duty as a commissioner, member of an executive committee, director, officer, agent or employee of the joint municipal assistance agency. The defense may be provided by the agency by its own counsel, by employing other counsel or by purchasing insurance which requires that the insurer provide the defense.

(b) The board of commissioners may appropriate funds for the purpose of paying all or part of a claim made or any civil judgment entered against any of its current or former commissioners, members of executive committees, directors, officers, agents or employees, when such claim is made or such judgment is rendered as damages on account of any act done or omission made or any act allegedly done or omission allegedly made in the scope and course of his current or former employment or duty as a commissioner, member of an executive committee, director, officer, agent or employee; provided, however, that nothing in this section shall authorize any joint municipal assistance agency to appropriate funds for the purpose of paying any claim made or civil judgment entered against any current or former commissioners, members of executive committees, directors, officers, agents or employees if the board of commissioners finds that commissioner, member of an executive committee, director, officer, agent or employee acted or failed to act because of actual fraud, corruption or actual malice on his part. Any joint municipal assistance agency may purchase insurance coverage for payment of claims or judgments pursuant to this section."

Sec. 28. G.S. 159B-48 reads as rewritten:

"§ *159B-48. Nonmunicipal members; constituent institutions of The University of North Carolina.*

Notwithstanding the provisions of Article 1 of Chapter 159B of the General Statutes or any other provision of law, any constituent institution of The University of North Carolina, as defined in Article 1 of Chapter 116 of the General Statutes, that owns a system or facility for the generation, transmission, or distribution of electric power and energy for public and private use, may become a member of a joint municipal assistance agency. The ~~Commissioner~~ commissioner and one or more alternate ~~Commissioners~~ commissioners designated by any such members shall be appointed by its local governing board. As a member, the constituent institution has all the rights, privileges, immunities, powers, authority, and responsibilities of a municipal member of a joint municipal assistance agency under Article 3 of this Chapter, including, the protection and immunities granted under Article 3 to those employed, appointed or otherwise acting on behalf of the constituent institutions, and the power and authority to enter into contracts and arrangements with a joint municipal assistance agency."

Sec. 29. The Joint Legislative Utility Review Committee shall study the question of whether further changes are needed to Chapter 159B of the General Statutes and shall report its findings and recommendations to the 1996 Regular Session of the General Assembly.

Sec. 30. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1995.

H.B. 447 **CHAPTER 413**

AN ACT TO REQUIRE AN AMBULANCE PROVIDER LICENSE.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 131E of the General Statutes is amended by adding a new section to read:

"*§ 131E-155.1. Ambulance Provider License required.*

(a) No person, firm, corporation, or association shall furnish, operate, conduct, maintain, advertise, or otherwise engage in or profess to be engaged in the business or service of treating or transporting patients upon the streets or highways, waterways, or airways in North Carolina unless a valid Ambulance Provider License has been issued by the Department.

(b) Before an Ambulance Provider License may be issued, the person, firm, corporation, or association seeking the license shall apply to the Department for this license. Application shall be made upon forms and according to procedures established by the Department. Prior to issuing an original or renewal Ambulance Provider License, the Department shall determine that the applicant meets all requirements for this license as set forth in this Article and in the rules adopted under this Article. Ambulance Provider Licenses shall be valid for a period specified by the Department, provided that the period shall be a minimum of four years unless action is taken under subsection (d) of this section.

(c) The Commission shall adopt rules setting forth the qualifications required for obtaining or renewing an Ambulance Provider License.

(d) The Department may deny, suspend, amend, or revoke an Ambulance Provider License in any case in which the Department finds that there has been a substantial failure to comply with the provisions of this Article or the rules adopted under this Article. The Department's decision to deny, suspend, amend, or revoke an Ambulance Provider License may be appealed by the applicant or licensee pursuant to the provisions of Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

(e) Operating as an ambulance provider without a valid Ambulance Provider License is a Class 3 misdemeanor. Each day's operation as an ambulance provider without a license is a separate offense."

Sec. 2. This act becomes effective December 1, 1995, and applies to licenses required on or after that date and to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 11th day of July, 1995.

H.B. 826 **CHAPTER 414**

AN ACT TO PROVIDE FOR THE LICENSING OF SOIL SCIENTISTS.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 89F.

"North Carolina Soil Scientist Licensing Act.

"§ 89F-1. *Short title.*

This Chapter may be cited as the North Carolina Soil Scientist Licensing Act.

"§ 89F-2. *Purposes.*

The purposes of this Chapter are to protect life, property, health, and public welfare through regulation of the practice of soil science in the State; to define the practice of soil science as a profession by establishing minimum standards of ethical conduct and professional responsibility and by establishing professional education and experience requirements; and to prevent abuses in the practice of soil science by untrained or unprincipled individuals.

"§ 89F-3. *Definitions.*

As used in this Chapter, unless the context otherwise requires:

(1) 'Board' means the North Carolina Board for Licensing of Soil Scientists.

(2) 'License' means a certificate issued by the Board to an individual who meets the requirements established for a licensed soil scientist by this Chapter and rules adopted pursuant to this Chapter.

(3) 'Licensed soil scientist' means a person who is licensed as a soil scientist under this Chapter.

(4) 'Practice of soil science' means any service or work, the adequate performance of which requires education in the physical, chemical, and biological sciences, as well as soil science; training and experience in the application of special knowledge of these sciences to the use and management of soils by accepted principles and methods; and investigation, evaluation, and consultation; and in which the performance is related to the public welfare by safeguarding life, health, property, and the environment. 'Practice of soil science' includes, but is not limited to, investigating and evaluating the interaction between water, soil, nutrients, plants, and other living organisms that are used to prepare soil scientists' reports for: subsurface ground absorption systems, including infiltration galleries; land application of residuals such as sludge, septage, and other wastes; spray irrigation of wastewater; soil remediation at conventional rates; land application of agricultural products; processing residues, bioremediation, and volatilization; soil erodibility and sedimentation; and identification of hydric soil and redoximorphic features.

(5) 'Responsible charge of work' means the independent control and direction by the use of initiative, skill, and independent judgment in the practice of soil science or supervision of the practice of soil science by soil scientists-in-training and subordinates.

(6) 'Soil' means the site or environmental setting consisting of soil material, saprolite, weathered materials, and soil rock interface. 'Soil' includes the solid materials, waters, gases, and other biological, chemical, and contaminant materials in the soil environment.

(7) 'Soil science' means the science dealing with soils as an environmental resource. 'Soil science' includes the following tasks: soil characterization, classification, and mapping, and the physical, chemical, hydrologic, mineralogical, biological, and microbiological analysis of soil per se, and to its assessment, analysis, modeling, testing, evaluation, and use for the benefit of mankind when specifically required to complete the investigation and evaluation of interactions between water, soil, nutrients, plants, and other living organisms described in subdivision (5) of this section. 'Soil science' does not include design or creative works, the adequate performance of which requires extensive geological, engineering, or land surveying education, training, and experience or requires licensing as a geologist under Chapter 89E of the General Statutes or as a professional engineer or land surveyor under Chapter 89C of the General Statutes.

(8) 'Soil scientist' means a person who practices soil science.

(9) 'Soil scientist-in-training' means a person who has passed the examination and satisfied all other requirements for licensure under this Chapter except for the professional work experience requirement.

(10) 'Subordinate' means any person who assists a licensed soil scientist in the practice of soil science without assuming the responsible charge of work.

"*§ 89F-4. North Carolina Board for Licensing of Soil Scientists.*

(a) Creation; Membership. -- The North Carolina Board for Licensing of Soil Scientists is created. The Board shall consist of seven members appointed as follows:

(1) One member appointed by the Governor, who shall be a soil scientist employed by a federal or State agency.

(2) One member appointed by the Governor, who shall be a soil scientist employed by a local government agency.

(3) One member appointed by the Governor, who shall be a soil scientist employed by an institution of higher education.

(4) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, who shall be a soil scientist who is privately employed.

(5) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, who shall be a member of the public who is not a soil scientist.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, who shall be a soil scientist who is privately employed.

(7) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, who shall be a member of the public who is not a soil scientist.

(b) Ex Officio Member. -- In addition to the members of the Board appointed pursuant to subsection (a) of this section, the President of the Soil Science Society of North Carolina, or a member of the Society appointed by its President, shall serve as a nonvoting ex officio member of the Board.

(c) Terms. -- Members shall serve staggered terms of office of three years. No member shall serve more than six consecutive years without an interruption in service of at least one year. The terms of office of members filling positions four and six shall expire on 30 June of years evenly divisible by three. The terms of office of members filling positions five and seven shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms of office of members filling positions one, two, and three shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Terms shall expire as provided by this subsection except that members of the Board shall serve until their successors are appointed and duly qualified as provided by G.S 128-7.

(d) Vacancies; Removal. -- Vacancies in appointments shall be filled for the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. The Governor shall have the power to remove, in accordance with G.S 143B-13, any member appointed by the Governor. The General Assembly shall have the power to remove, in accordance with G.S 143B-13, any member appointed by the General Assembly.

(e) Quorum. -- A majority of the members of the Board appointed pursuant to subsection (a) of this section shall constitute a quorum for the transaction of business.

(f) Compensation; Expenses. -- Subject to the availability of funds, members of the Board may receive compensation for their services and be reimbursed for expenses incurred in the performance of duties required by this Chapter at the rates prescribed in G.S. 138-5.

"§ *89F-5. Powers and duties of the Board.*

(a) The Board shall:

(1) Administer and enforce the provisions of this Chapter.

(2) Elect from its membership a Chair, a Vice-Chair, and a Secretary-Treasurer.

(3) Examine and pass on the qualifications of all applicants for licensing under this Chapter and issue a license to each successful applicant.

(4) Hold at least two regular meetings each year.

(5) Establish and receive fees as required by this Chapter. In establishing fees, the Board may provide for reduced fees or an exemption from fees for persons licensed under this Chapter who practice soil science for less than 15 days per calendar year.

(6) Adopt rules that establish standards or approve reasonable standards for licensing and renewal of licenses of soil scientists, including adopting examination materials and accreditation standards of any recognized accrediting agency.

(7) Establish reasonable standards for continuing professional education for soil scientists. No examination shall be required for a renewal of a license.

(8) Submit two nominees to the appropriate appointing authority for each position to be filled on the Board.

(9) Have any other powers and duties as are necessary to implement the provisions of this Chapter and adopt any rules needed to implement this Chapter.

(b) The Board may adopt a seal that may be affixed to all licenses issued by the Board.

(c) The Secretary-Treasurer shall deposit funds received by the Board in one or more funds in banks or other financial institutions carrying deposit insurance and authorized to do business in the State. Interest earned on funds may remain in the account and may be expended as authorized by the Board to carry out the provisions of this Chapter. The Board may authorize expenditures deemed necessary to carry out the provisions of this Chapter, and all expenses shall be paid upon the warrant of the Secretary-Treasurer. During any fiscal year, expenditures shall not exceed the revenues of the Board.

(d) The Board may employ the necessary personnel for the performance of its functions and shall fix their compensation within the limits of funds available to the Board. The Board may procure personal property in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes.

(e) The Board may adopt rules in accordance with Chapter 150B of the General Statutes and shall administer this Chapter in accordance with Chapter 150B of the General Statutes.

"*§ 89F-6. Corporate, partnership, or sole proprietorship practice of soil science.*

A corporation organized under Chapter 55B of the General Statutes, a partnership, or a sole proprietorship may engage in the practice of soil science in this State. A licensed soil scientist shall be in responsible charge of all practice of soil science by the corporation, partnership, or sole proprietorship.

"*§ 89F-7. Exemptions.*

(a) Except as provided in subsection (b) of this section, any person who practices or offers to practice soil science in this State is subject to the provisions of this Chapter.

(b) The following are exempt from the provisions of this Chapter:

(1) Persons engaged solely in teaching soil science or engaged solely in soil science research.

(2) Officers and employees of the United States, the State, and units of local government who practice soil science solely in the capacity of their office or employment.

(3) Officers and employees of companies engaged in the practice of soil science, when the officers and employees practice soil science solely in the capacity of their employment and who do not offer their services to the public for hire.

"§ 89F-8. *Limitations.*

This Chapter shall not prevent:

(1) The practice of any profession or trade for which a license is required under any other law of this State.

(2) Registered professional engineers from lawfully practicing soil mechanics, foundation engineering, or other professional engineering practices for which a license is required pursuant to Chapter 89C of the General Statutes.

(3) Registered land surveyors licensed pursuant to Chapter 89C of the General Statutes from practicing surveying.

(4) Architects licensed pursuant to Chapter 83A of the General Statutes or landscape architects licensed pursuant to Chapter 89A of the General Statutes from lawfully practicing architecture or landscape architecture.

(5) Geologists licensed pursuant to Chapter 89E of the General Statutes from practicing geology.

(6) The practice of soil science for 30 days or less in any calendar year by a person who is not a resident of this State and who has no established place of business in this State if the person:

a. Is licensed to practice soil science in another state where the requirements for a license equal or exceed the requirements for licensure under this Chapter;

b. Files a statement giving the person's name, address, the license number, and issuing authority with the Board within 10 days of commencing the practice of soil science in this State; and

c. Files a statement with the Board detailing the total time that the person engaged in the practice of soil science in the State within 10 days of the day on which the practice of soil science is completed.

(7) The practice of soil science by a person who is not a resident of this State and who has no established place of business in this State, the practice of soil science by a person who has become a resident of this State within the preceding 30 days, or the practice or an offer to practice soil science for more than 30 days in any calendar year by a person who is licensed as a soil scientist in another state, who meets the licensing requirements of this Chapter, and who has filed an application for a license with the Board and paid the application fee. The practice of soil science under this subdivision shall continue only until the Board acts on the application for licensure under this Chapter.

(8) Soil sampling solely for the purpose of determining plant nutrient and lime application rates for gardening and agricultural purposes by persons who are not licensed soil scientists.

"§ 89F-9. *Applications.*

An application for a license as a soil scientist shall be made under oath, shall show the applicant's education and a summary of the applicant's professional work experience as a soil scientist, and shall show any other relevant criteria as determined by the Board.

"*§ 89F-10. Minimum qualifications.*

(a) To be eligible for a license as a soil scientist in this State, an applicant shall satisfy the following minimum qualifications:

(1) Be of good moral and ethical character as attested to by (i) four letters of reference, two of which shall be written by licensed soil scientists or persons who are eligible for licensure under this Chapter, and (ii) an agreement signed by the applicant to adhere to the Code of Professional Conduct adopted pursuant to G.S. 89F-17. For purposes of this requirement, 'good moral and ethical character' means character that tends to ensure faithful discharge of the duties of a licensed soil scientist.

(2) Hold at least a bachelor of science degree from an accredited college or university with a minimum of 30 semester hours or 45 quarter hours in agricultural, biological, physical, or earth sciences and at least 15 semester hours or an equivalent number of quarter hours in soil science. The Board may adopt rules specifying combinations of education and experience that an applicant may substitute for a bachelor of science degree.

(3) Successfully pass an examination established by the Board. The examination shall be designed to demonstrate whether the applicant has the necessary knowledge and requisite skill to exercise the responsibilities of the practice of soil science.

(4) Subject to subsection (b) of this section, have at least three years of professional work experience as a soil scientist under the supervision of a licensed soil scientist, or a soil scientist who is eligible for licensure, under this Chapter, or a minimum of three cumulative years of professional work experience as a soil scientist in responsible charge of work satisfactory to the Board and in accordance with standards established by the Board by rule.

(b) An applicant may substitute an advanced degree in soil science for a portion of the professional work experience requirement. The Board, in its discretion, may allow an applicant to substitute a masters degree in soil science for one year of professional work experience and to substitute a doctoral degree in soil science for two years of professional work experience. The Board, in its discretion, may allow an applicant to substitute experience gained through teaching upper level soil science courses at the college or university level or research in soil science for all or any portion of the professional work experience requirement if the Board finds the teaching or research to be equivalent to the responsible charge of work by a soil scientist.

(c) The Board shall designate an applicant who meets all the requirements for a license under this Chapter except the professional work experience requirement as a soil scientist-in-training. A soil scientist-in-training may apply for a license upon completion of the professional work experience requirement.

"§ 89F-11. *Examinations.*

Examinations shall be formulated and conducted by the Board at the time and place as determined by the Board, and shall be held at least annually.

"§ 89F-12. *Comity.*

A person who holds a license to engage in the practice of soil science on the basis of comparable licensing requirements issued to that person by a proper authority by another state, by a territory, or by a possession of the United States or the District of Columbia, and who, as determined by the Board, meets the requirements of this Chapter based upon verified evidence, may, upon application, be licensed without taking an examination pursuant to G.S. 89F-10(a)(3).

"§ 89F-13. *Issuance, renewal, and replacement of licenses.*

(a) The Board shall issue a license to any applicant who has satisfactorily met the requirements of this Chapter including the payment of the license fee. A license shall be valid for the period of time established by the Board by rule. Each license shall state the full name of the registrant, shall have a serial number, shall state the date on which the license expires, shall be signed by the Chair and Secretary-Treasurer of the Board, and shall bear the seal of the Board. The issuance of a license by the Board shall be prima facie evidence that the person named on the license is entitled to all the rights and privileges of a licensed soil scientist for the period the license remains in effect.

(b) The Board shall renew the license of any licensee who continues to meet the requirements of this Chapter and who pays the renewal fee prior to the expiration of the license. The Board shall reinstate the license of any licensee whose license has expired, who continues to meet the requirements of this Chapter, and who pays the restoration fee.

(c) If a license is lost, destroyed, or mutilated, the Board may issue a replacement license subject to rules adopted by the Board.

"§ 89F-14. *Seals; requirements.*

Upon the issuance of a license, each soil scientist shall obtain from the Secretary-Treasurer a seal bearing the licensee's name and the legend 'Licensed Soil Scientist -- State of North Carolina'. The Board shall ensure that the design of the seal is easily distinguished from other professional seals. All drawings, reports, or other soil science papers or documents involving the practice of soil science that are prepared or approved by a licensed soil scientist or a subordinate under his or her direction shall be signed by the soil scientist and impressed with the seal. The impression of the seal indicates his or her responsibility for the practice of soil science.

"§ 89F-15. *Records.*

(a) The Board shall maintain a record of its proceedings and a register of all applications for licensure under this Chapter. For each applicant the register shall show:

(1) The name, age, and home address of the applicant.
(2) The date of application.
(3) The applicant's place of business.
(4) The applicant's education, professional work experience, and other qualifications.
(5) Whether the applicant was required to take an examination.

(6) Whether a license was issued to the applicant.
(7) Whether the applicant is currently licensed.
(8) The date and nature of any action by the Board with respect to the applicant or licensee.
(9) Any other information that the Board determines to be necessary to meet the requirements of this Chapter or rules adopted pursuant to this Chapter.

(b) The Board shall treat as confidential and not subject to disclosure, except to the extent required by law or by rule of the Board, individual applications, related information, and examination scores.

"§ 89F-16. *Roster of licensed soil scientists.*

The Secretary-Treasurer of the Board shall keep a record and shall publish annually a roster showing the names, places of business, and residence addresses of all soil scientists licensed under this Chapter. Copies of this roster shall be made available to the public upon request and payment of a reasonable fee, established by the Board, for copying.

"§ 89F-17. *Code of Professional Conduct.*

The Board shall prepare and adopt by rule a Code of Professional Conduct that shall be made known in writing to every licensee and applicant for licensing under this Chapter and that shall be published by the Board. Publication of the Code of Professional Conduct is due notice to all licensees of its contents. The Board may revise and amend this Code of Professional Conduct. Prior to adoption of any revision or amendments, all licensed members and the public shall receive due notice and an opportunity to be heard.

"§ 89F-18. *Complaints.*

Any person may file written charges of violations of this Chapter or any rules adopted pursuant to this Chapter with the Board against any licensee. Any charges or allegations shall be in writing, shall be sworn to by the person making them, and shall be filed with the Secretary-Treasurer of the Board. The Board shall investigate reasonably all valid complaints.

"§ 89F-19. *Prohibitions; unlawful acts.*

(a) It is unlawful for any person other than a licensed soil scientist or a subordinate under the soil scientist's direction to conduct or participate in any practice of soil science or prepare any soil science reports, maps, or documents related to the public welfare or the safeguarding of life, health, property, or the environment.

(b) It is unlawful for any person, including a soil scientist-in-training or a subordinate, to practice, or offer to practice, soil science in this State, or to use in connection with his or her name, otherwise assume, or advertise any title or description tending to convey the impression that he or she is a licensed soil scientist, unless that person has been duly licensed or is exempted under the provisions of this Chapter.

(c) It is unlawful for anyone other than a licensed soil scientist to stamp or seal any soils-related plans, maps, reports, or other soils-related documents with the seal or stamp of a licensed soil scientist, or use in any manner the title 'soil scientist', unless that person is licensed under this Chapter.

(d) It is unlawful for any person to affix his or her signature to, stamp, or seal any soils-related plans, maps, reports, or other soils-related documents after the license of the person has expired, been suspended, or revoked.

(e) It is unlawful for a licensed soil scientist to prepare plats and maps so as to engage in the practice of land surveying by a registered land surveyor, as defined in G.S. 89C-3, unless the licensed soil scientist is also a registered land surveyor, as defined in G.S 89C-3.

(f) It is unlawful for a licensed soil scientist to engage in the design of engineering works and systems, as that phrase is used in G.S. 89C-3(6), unless the licensed soil scientist is also a registered professional engineer, as defined in G.S. 89C-3.

"§ 89F-20. Disciplinary procedures.

(a) The Board may, consistent with the provisions of Chapter 150B of the General Statues, refuse to grant or to renew, suspend, or revoke the license of any person licensed under this Chapter who:

(1) Violates the provisions of this Chapter or a rule adopted by the Board.

(2) Has been convicted of a misdemeanor under this Chapter.

(3) Has been convicted of a felony.

(4) Has been found by the Board to have engaged in unprofessional conduct, dishonest practice, incompetence, fraud or deceit in obtaining a license, or who aids another person who obtains or attempts to obtain a license by fraud or deceit.

(b) In lieu of revoking a license, the Board may enter a probationary order and assess a civil penalty not to exceed one thousand dollars ($1,000). In determining the amount of a penalty under this section, the Board shall consider the following factors:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.

(2) The duration and gravity of the violation.

(3) The effect on water quality.

(4) The cost of rectifying the damage.

(5) The cost to the State of enforcement procedures.

(6) The prior record of the violator in complying or failing to comply with this Chapter or a rule adopted pursuant to this Chapter.

"§ 89F-21. Reissuance of license.

The Board may, by a vote of the quorum, reissue a license to any person whose license has been revoked if the Board finds, after written application by the applicant, that there is good cause to justify the reissuance of the license.

"§ 89F-22. Misdemeanors.

A person who does any of the following shall be guilty of a Class 2 misdemeanor:

(1) Willfully practices soil science or offers to practice soil science for any other person in this State without being licensed in accordance with the provisions of this Chapter.

(2) Presents, or attempts to use as his or her own, the license or the seal of any other soil scientist.
(3) Gives any false or forged evidence in the course of applying for a license under this Chapter.
(4) Impersonates a licensed soil scientist.
(5) Attempts to use an expired or revoked license, or practice at any time while the license is suspended or revoked.
(6) Violates the provisions of this Chapter or rules adopted pursuant to this Chapter.

"*§ 89F-23. Injunctive relief.*

The Board may seek injunctive relief to enjoin and restrain any natural or corporate person from violating this Chapter. The Board shall not be required to post bond in connection with obtaining either provisional, preliminary, or permanent injunctive relief.

"*§ 89F-24. Legal advisor.*

The Attorney General or his designee shall act as legal advisor to the Board.

"*§ 89F-25. Fees.*

The Board shall determine fees for the following services that shall not exceed the amounts specified in this section:

Application	$50.00
Examination	125.00
License	85.00
Renewal	85.00
Restoration	110.00
Replacement license	50.00
Seal	30.00."

Sec. 2. Notwithstanding the provisions of G.S. 89F-10, as enacted in Section 1 of this act, the North Carolina Board for Licensing of Soil Scientists shall issue a license without an examination to any applicant who applies for licensure under Chapter 89F of the General Statutes, as enacted in Section 1 of this act, within one year of the initial meeting of the North Carolina Board for Licensing of Soil Scientists and who meets all licensing requirements other than the examination requirement.

Sec. 3. In order to establish a schedule of staggered terms of three years for the North Carolina Board for Licensing of Soil Scientists established by G.S. 89F-4, as enacted by Section 1 of this act, the terms of members of the Board who are initially appointed to fill positions one, two, and three shall be two years; the terms of members of the Board who are initially appointed to fill positions four and six shall be three years; and the terms of members of the Board who are initially appointed to fill positions five and seven shall be one year. In the event that the General Assembly fails to appoint initial members to the North Carolina Board for Licensing of Soil Scientists during the 1995 Regular Session, the failure to make initial appointments shall be treated as though vacancies had occurred and these vacancies may be filled by appointments as provided in G.S. 120-122. The North Carolina Board for Licensing of Soil Scientists shall hold an initial

meeting in the City of Raleigh within 30 days after all appointments to the Board are made as provided in this act.

Sec. 4. This act becomes effective upon ratification, except for G.S. 89F-19, 89F-22, 89F-23, as enacted in Section 1 of this act, which become effective 1 January 1997.

In the General Assembly read three times and ratified this the 11th day of July, 1995.

H.B. 895 **CHAPTER 415**

AN ACT TO PROVIDE NOTICE OF FEDERAL MANDATES BY REQUIRING THE CERTIFICATION OF PROPOSED LEGISLATION AND RULES PURPORTED TO BE REQUIRED BY FEDERAL LAW, TO PROVIDE FOR REVIEW BY THE GOVERNOR OF ADMINISTRATIVE RULES THAT WOULD INCREASE OR DECREASE EXPENDITURES OR REVENUES OF UNITS OF LOCAL GOVERNMENT, TO AMEND THE LOCAL GOVERNMENT FISCAL INFORMATION ACT TO REQUIRE THE PREPARATION OF FISCAL NOTES FOR CERTAIN PROPOSED LEGISLATION, AND TO PROVIDE FOR THE COMPILATION OF THE COSTS OF FEDERAL MANDATES ON THE EXPENDITURES AND REVENUES OF STATE GOVERNMENT AND LOCAL GOVERNMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-21 reads as rewritten:

"§ *150B-21. Agency must designate rule-making ~~coordinator.~~ coordinator; duties of coordinator.*

(a) Each agency must designate one or more rule-making coordinators to oversee the agency's rule-making functions. The coordinator ~~must prepare notices of public hearings, coordinate access to the agency's rules, and~~ shall serve as the liaison between the agency, other agencies, units of local government, and the public in the rule-making process. The coordinator shall report directly to the agency head.

(b) The rule-making coordinator shall be responsible for the following:

(1) Preparing notices of public hearings.

(2) Coordinating access to the agency's rules.

(3) Screening all proposed rule actions prior to publication in the North Carolina Register to assure that an accurate fiscal note has been completed as required by G.S. 150B-21.4(b).

(4) Consulting with the North Carolina Association of County Commissioners and the North Carolina League of Municipalities to determine which local governments would be affected by any proposed rule action.

(5) Providing the North Carolina Association of County Commissioners and the North Carolina League of Municipalities with copies of all fiscal notes required by G.S. 150B-21.4(b), prior to the publication of proposed rules in the North Carolina Register.

(6) Coordinating the submission of proposed rules to the Governor as provided by G.S. 150B-21.26.

(c) At the earliest point in the rule-making process and in consultation with the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and with samples of county managers or city managers, as appropriate, the rule-making coordinator shall lead the agency's efforts in the development and drafting of any rules or rule changes that could:

(1) Require any unit of local government, including a county, city, school administrative unit, or other local entity funded by or through a unit of local government to carry out additional or modified responsibilities;

(2) Increase the cost of providing or delivering a public service funded in whole or in part by any unit of local government; or

(3) Otherwise affect the expenditures or revenues of a unit of local government.

(d) The rule-making coordinator shall send to the Office of State Budget and Management for compilation a copy of each final fiscal note prepared pursuant to G.S. 150B-21.4(b).

(e) The rule-making coordinator shall compile a schedule of the administrative rules and amendments expected to be proposed during the next fiscal year. The coordinator shall provide a copy of the schedule to the Office of State Budget and Management in a manner proposed by that Office.

(f) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the rule-making coordinator shall:

(1) Attach to the proposed rule a certificate prepared by the rule-making coordinator identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons for why the proposed rule is required by law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion. No comment or opinion shall be included in the certification with regard to the merits of the proposed rule; and

(2) The rule-making coordinator shall maintain a copy of the federal law and shall provide to the Office of State Budget and Management for compilation the citation to the federal law requiring or pertaining to the proposed rule."

Sec. 2. G.S. 150B-21.4(b) reads as rewritten:

"(b) Local Funds. -- Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Office of the Governor as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the Office of State Budget and Management, the North Carolina Association of County

Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed."

Sec. 3. Article 2A of Chapter 150B of the General Statutes is amended by adding a new Part to read:

"Part 4. Rules Affecting Local Governments.

"*§ 150B-21.26. Governor to conduct preliminary review of certain administrative rules.*

(a) Preliminary Review. -- Before an agency adopts a permanent rule that would affect the expenditures or revenues of a unit of local government, and at least 30 days prior to publishing notice of its intent to adopt such permanent rule in the North Carolina Register as required by G.S. 150B-21.2, an agency shall submit the rule to the Governor for preliminary review.

(b) Submission. -- To facilitate the Governor's preliminary review of a permanent rule as required by subsection (a) of this section, the agency shall submit to the Governor the following:

(1) Either the text of the proposed rule or a statement of the subject matter of the proposed rule.

(2) A short explanation of the reason for the proposed action.

(3) A fiscal note stating the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and explaining how the amount was computed.

(c) Scope. -- The Governor's preliminary review of a proposed rule that would affect the expenditures or revenues of a unit of local government shall include consideration of the following:

(1) The agency's explanation of the reason for the proposed action.

(2) Any unanticipated effects of the proposed action on local government budgets.

(3) The potential costs of the proposed action weighed against the potential risks to the public of not taking the proposed action.

"*§ 150B-21.27. Minimizing the effects of rules on local budgets.*

(a) In adopting rules that would increase or decrease the expenditure or revenues of a unit of local government, the agency shall consider the timing for implementation of the proposed rule as part of the preparation of the fiscal note required by G.S. 150B-21.4(b).

(b) In cases where the computation of costs in a fiscal note indicates that the proposed rule action will disrupt the budget process as set out in the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes, the agency shall establish the effective date of the rule or action as the later of July 1 of the fiscal year following publication of the rule in the North Carolina Register or six months following publication.

(c) If conditions beyond the control of an agency compel an agency to adopt rules with other than the July 1 effective date, the agency shall include a statement with the fiscal note explaining the basis for the effective date.

"*§ 150B-21.28. Role of the Office of State Budget and Management.*

The Office of State Budget and Management shall:

(1) Compile an annual summary of the projected fiscal impact on units of local government of State administrative rules adopted during the preceding fiscal year.

(2) Compile from information provided by each agency schedules of anticipated rule actions for the upcoming fiscal year.

(3) Provide the Governor, the General Assembly, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities with a copy of the annual summary and schedules by no later than March 1 of each year."

Sec. 4. G.S. 150B-21.11 reads as rewritten:

"§ *150B-21.11. Procedure when Commission approves permanent rule.*

(a) When the Commission approves a permanent rule, it must notify the agency that adopted the rule of the Commission's approval and must deliver the approved rule to the Codifier of Rules. The Commission must deliver an approved rule by the end of the month in which the Commission approved the rule, unless the agency asks the Commission to delay the delivery of the rule.

(b) When the Commission approves a permanent rule that would increase or decrease expenditures or revenues of a unit of local government, the Commission shall notify the Governor and deliver a copy of the approved rule to the Governor by the end of the month in which the Commission approved the rule."

Sec. 5. G.S. 150B-21.12(a) reads as rewritten:

"(a) Action. -- When the Commission objects to a permanent rule, it must send the agency that adopted the rule a written statement of the objection and the reason for the objection. The agency that adopted the rule must take one of the following actions:

(1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.

(2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.

An agency that is not a board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later.

When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection.

A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it may send to the President of the Senate and each member of the General Assembly a report of its objection to the rule.

When the Commission objects to a permanent rule that would increase or decrease expenditures or revenues of a unit of local government, the Commission shall notify the Governor and deliver to the Governor a copy of the written statement of the objection and the reason for the objection. When the Commission returns to a rule to which it has objected that would increase or decrease expenditures or revenues of a unit of local government, it shall send to the Governor a report of its objection to the rule."

Sec. 6. G.S. 120-30.45 reads as rewritten:

"§ *120-30.45. Fiscal note on legislation.*

~~At the request of the sponsor of any bill or resolution affecting the expenditures or revenues of units of local government of this State, or of the chairman of the committee to which such a measure is referred, or of any of the chairmen of the Local Government Committees, or of any of the chairmen of the Appropriations, Finance, Rules, or Senate Ways and Means Committees, the Fiscal Research Division shall prepare a fiscal note containing an estimate of the impact of the measure on the finances of the units of local government affected during the ensuing two fiscal years.~~

(a) Every bill and resolution introduced in the General Assembly proposing any change in the law that could increase or decrease expenditures or revenues of a unit of local government shall have attached to it at the time of its consideration by the General Assembly a fiscal note prepared by the Fiscal Research Division. The fiscal note shall identify and estimate, for the first five fiscal years the proposed change would be in effect, all costs of the proposed legislation. If, after careful investigation, the Fiscal Research Division determines that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar amount can be given. No comment or opinion shall be included in the fiscal note with regard to the merits of the measure for which the note is prepared. However, technical and mechanical defects may be noted.

(b) The sponsor of each bill or resolution to which this section applies shall present a copy of the bill or resolution with the request for a fiscal note to the Fiscal Research Division. Upon receipt of the request and the copy of the bill or resolution, the Fiscal Research Division shall prepare the fiscal note as promptly as possible. The Fiscal Research Division shall prepare the fiscal note and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

(c) This fiscal note shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a fiscal note. A fiscal note attached to a bill or resolution pursuant to this subsection is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

(d) If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment that proposes a change in the law that could increase or decrease expenditures or revenues of a unit of local government, the chair of the committee shall obtain from the Fiscal Research Division and attach to the amended bill or resolution a fiscal note as provided in this section.

(e) The Office of State Budget and Management, the Department of Revenue, the Department of the State Treasurer, the Department of the State Auditor, the State department most directly concerned, and, where appropriate, officials of units of local government, upon the request of Fiscal Research Division, shall assist the Fiscal Research Division in the preparation of the fiscal note.

(f) Copies of fiscal notes prepared by the Fiscal Research Division shall be furnished to the sponsor of the bill or resolution, the chairmen of the Local Government Committees, and the chairmen of the Appropriations, Finance, Rules, or the Senate Ways and Means Committees as appropriate."

Sec. 7. Article 6D of Chapter 120 of the General Statutes is amended by adding a new section to read:

"*§ 120-30.49. Compiling federal mandates; annual report.*

(a) The Fiscal Research Division shall, in consultation with the appropriate staff of the Research and Bill Drafting Divisions, make an annual report to the General Assembly pertaining to the fiscal effect of federal mandates on, or federal law on which is conditioned the receipt of federal funds by the State and units of local government. The annual report on federal mandates shall include the following:

(1) A listing of federal laws that require the State and any unit of local government, including a county, city, school administrative unit, or other local entity funded by or through a unit of local government to carry out additional or modified responsibilities;

(2) An estimate of the amount of any increase or decrease in the costs to the State and units of local government in providing or delivering public services required by federal law that are funded in whole or in part by the State or units of local government; and

(3) A listing of any other federal actions directly affecting the expenditures or revenues of the State and units of local government.

(b) The Office of State Budget and Management shall assist the Fiscal Research Division in the preparation of the annual report on federal mandates upon the request of the Division. Each State department, agency, or institution shall cooperate fully with the Fiscal Research Division in compiling the annual report on federal mandates and shall supply information to the Division in accordance with G.S. 120-32.01. The North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and units of local government shall cooperate with the Fiscal Research Division in compiling the annual report on federal mandates, as requested, by supplying information relevant to the expenditures or revenues of units of local government.

(c) Copies of the annual report on federal mandates to the State and units of local government shall be provided to members of the General Assembly and to the Governor, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities."

Sec. 8. Article 7A of Chapter 120 of the General Statutes is amended by adding a new section to read:

"*§ 120-36.8. Certification of legislation required by federal law.*

(a) Every bill and resolution introduced in the General Assembly proposing any change in the law which purports to implement federal law or to be required or necessary for compliance with federal law, or on which is conditioned the receipt of federal funds shall have attached to it at the time of its consideration by the General Assembly a certification prepared by the Fiscal Research Division, in consultation with the Bill Drafting and Research Divisions, identifying the federal law requiring passage of the bill or resolution. The certification shall contain a statement setting forth the reasons why the bill or resolution is required by federal law. If the bill or resolution is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion. No comment or opinion shall be included in the certification with regard to the merits of the measure for which the certification is prepared. However, technical and mechanical defects may be noted.

(b) The sponsor of each bill or resolution to which this section applies shall present a copy of the bill or resolution with the request for certification to the Fiscal Research Division. Upon receipt of the request and the copy of the bill or resolution, the Fiscal Research Division shall consult with the Bill Drafting and Research Divisions, and may consult with the Office of State Budget and Management or any State agency on preparation of the certification as promptly as possible. The Fiscal Research Division shall prepare the certification and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

(c) This certification shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a certification. A certification attached to a bill or resolution pursuant to this section is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

(d) If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment proposing any change in the law which purports to implement federal law or to be required or necessary for compliance with federal law, the chair of the committee shall obtain from the Fiscal Research Division and attach to the amended bill or resolution a certification as provided in this section."

Sec. 9. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 11th day of July, 1995.

S.B. 119 **CHAPTER 416**

AN ACT TO PROVIDE QUALIFIED IMMUNITY TO PROFESSIONAL ENGINEERS AND ARCHITECTS WHO VOLUNTARILY PROVIDE ENGINEERING SERVICES DURING A DECLARED EMERGENCY OR DISASTER WITHOUT COMPENSATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 89C of the General Statutes is amended by adding a new section to read:

"*§ 89C-19.1. Engineer who volunteers during an emergency or disaster; qualified immunity.*

(a) A professional engineer who voluntarily, without compensation, provides structural, electrical, mechanical, or other engineering services at the scene of a declared disaster or emergency, declared under federal law or in accordance with the provisions of Article 1 of Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General Statutes, at the request of a public official, law enforcement official, public safety official, or building inspection official, acting in an official capacity, shall not be liable for any personal injury, wrongful death, property damage, or other loss caused by the professional engineer's acts or omissions in the performance of the engineering services.

(b) The immunity provided in subsection (a) of this section applies only to an engineering service:

(1) For any structure, building, piping, or other engineered system, either publicly or privately owned.

(2) That occurs within 45 days after the declaration of the emergency or disaster, unless the 45-day immunity period is extended by an executive order issued by the Governor under the Governor's emergency executive powers.

(c) The immunity provided in subsection (a) of this section does not apply if it is determined that the personal injury, wrongful death, property damage, or other loss was caused by the gross negligence, wanton conduct, or intentional wrongdoing of the professional engineer, or arose out of the operation of a motor vehicle.

(d) As used in this section:

(1) 'Building inspection official' means any appointed or elected federal, State, or local official with overall executive responsibility to coordinate building inspection in the jurisdiction in which the emergency or disaster is declared.

(2) 'Law enforcement official' means any appointed or elected federal, State, or local official with overall executive responsibility to coordinate law enforcement in the jurisdiction in which the emergency or disaster is declared.

(3) 'Public official' means any federal, State, or locally elected official with overall executive responsibility in the jurisdiction in which the emergency or disaster is declared.

(4) 'Public safety official' means any appointed or elected federal, State, or local official with overall executive responsibility to coordinate public safety in the jurisdiction in which the emergency or disaster is declared."

Sec. 2. Chapter 83A of the General Statutes is amended by adding a new section to read:

"*§ 83A-13.1. Architect who volunteers during an emergency or disaster; qualified immunity.*

(a) A professional architect who voluntarily, without compensation, provides structural, electrical, mechanical, or other architectural services at the scene of a declared disaster or emergency, declared under federal law or in accordance with the provisions of Article 1 of Chapter 166A of the

General Statutes or Article 36A of Chapter 14 of the General Statutes, at the request of a public official, law enforcement official, public safety official, or building inspection official, acting in an official capacity, shall not be liable for any personal injury, wrongful death, property damage, or other loss caused by the professional architect's acts or omissions in the performance of the architectural services.

(b) The immunity provided in subsection (a) of this section applies only to an architectural service:

(1) For any structure, building, piping, or other architectural system, either publicly or privately owned.

(2) That occurs within 45 days after the declaration of the emergency or disaster, unless the 45-day immunity period is extended by an executive order issued by the Governor under the Governor's emergency executive powers.

(c) The immunity provided in subsection (a) of this section does not apply if it is determined that the personal injury, wrongful death, property damage, or other loss was caused by the gross negligence, wanton conduct, or intentional wrongdoing of the professional architect or arose out of the operation of a motor vehicle.

(d) As used in this section:

(1) 'Building inspection official' means any appointed or elected federal, State, or local official with overall executive responsibility to coordinate building inspection in the jurisdiction in which the emergency or disaster is declared.

(2) 'Law enforcement official' means any appointed or elected federal, State, or local official with overall executive responsibility to coordinate law enforcement in the jurisdiction in which the emergency or disaster is declared.

(3) 'Public official' means any federal, State, or locally elected official with overall executive responsibility in the jurisdiction in which the emergency or disaster is declared.

(4) 'Public safety official' means any appointed or elected federal, State, or local official with overall executive responsibility to coordinate public safety in the jurisdiction in which the emergency or disaster is declared."

Sec. 3. This act is effective upon ratification and applies to any cause of action that arises on or after that date.

In the General Assembly read three times and ratified this the 11th day of July, 1995.

S.B. 430 **CHAPTER 417**

AN ACT TO MODIFY THE INVESTMENT AUTHORITY OF A BANK UNDER THE BANKING LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-47 reads as rewritten:

"*§ 53-47. Limitations on investment in stocks.*

~~No bank shall make any investment in the capital stock of any other state or national bank; Provided, that nothing herein shall be construed to prevent banks doing business under this Chapter from subscribing to or purchasing, upon such terms as may be agreed upon, the capital stock of clearing corporations as defined in G.S. 25-8-102(3), the capital stock of banks organized under that act of Congress known as the "Edge Act", the capital stock of central reserve banks whose capital stock exceeds one million dollars ($1,000,000), or capital stock of the Federal Home Loan Bank. To constitute a central reserve bank as contemplated by this Chapter, at least fifty percent (50%) of the capital stock of such bank shall be owned by other banks. The investment of any bank in the capital stock of such central reserve bank or bank organized under the act of Congress commonly known as the "Edge Act," shall at no time exceed ten percent (10%) of the paid-in capital and permanent surplus of the bank making same. No bank shall invest more than seventy-five percent (75%) of its unimpaired capital fund in the stocks of other corporations, firms, partnerships, or companies, unless such stock is purchased to protect the bank from loss. The foregoing limitation shall not apply to stock or ownership interests acquired in corporations, firms, partnerships or companies which hold banking premises or which are bank operating subsidiaries of such bank. The term "invest" shall be deemed to include operating a business entity acquired by the bank, provided, however, that no bank shall make any such investment resulting in operations which are not closely related to banking without the prior written approval of the Commissioner of Banks. The Commissioner of Banks shall monitor the impact of investment activities of banks under this section on the safety and soundness of such banks. Any stocks owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the same, and if not so disposed of they shall be charged to profit and loss account, and no longer carried on the books as an asset. The limit of time in which said stocks shall be disposed of or charged off the books of the bank may be extended by the Commissioner of Banks if in his judgment it is for the best interest of the bank that such extension be granted; provided that the limitations imposed in this section on the ownership of stock in or securities of corporations is suspended to the extent (and to that extent only) that any bank operating under the supervision of the Commissioner of Banks may subscribe for and purchase shares of stock in or debentures, bonds or other types of securities of any corporation organized under the laws of the United States of America for the purpose of insuring to depositors a part or all of their funds on deposit in banks where and to such extent as such stock or security ownership is required in order to obtain the benefits of such deposit insurance for its depositors.~~

(a) In addition to any powers or investments authorized by any other section of this Chapter, a bank may invest in the capital stock or other securities of any other state, national or foreign bank or trust company, and in any other industrial bank, savings bank, Morris Plan bank, savings and loan association, bankers' bank or other deposit taking entity chartered or existing under any federal, state, or foreign law including, but not limited to, the capital stock of clearing corporations defined in G.S. 25-8-102(3),

the capital stock or other securities of central reserve banks whose capital stock exceeds one million dollars ($1,000,000) and the capital stock of an Edge or Agreement corporation. As used in this Chapter, the term 'bankers' bank' means an insured depository financial institution, organized and chartered to do business exclusively with other banks and savings institutions, and the stock of which, or the stock of the holding company which controls such bank, is owned exclusively (except to the extent directors' qualifying shares are required by law) by banks or savings institutions. To constitute a central reserve bank as contemplated by this Chapter, at least fifty percent (50%) of the capital stock of such bank shall be owned by other banks. The investment of any bank in the capital stock of such central reserve bank or bank organized under the 'Edge Act', (12 U.S.C. § 611 et seq.) shall at no time exceed ten percent (10%) of the paid-in capital and permanent surplus of the bank making the investment.

(b) A bank may invest, without limitation, in a corporation, firm, partnership, or company:

(1) Which is a bank operating subsidiary, or

(2) To protect the bank from loss.

(c) In addition to the foregoing, upon 30 days prior written notice to the Commissioner of Banks, providing such detail as the Commissioner may require, a bank may invest, in the aggregate, up to seventy-five percent (75%) of its unimpaired capital fund in the stock or assets of other corporations, firms, partnerships, or companies which are:

(1) Primarily engaging in activities permissible for national banks or bank holding companies under applicable laws, rules, regulations or orders;

(2) Primarily engaging in activities of a financial nature, including the transmission or processing of information or data relating to such activities. For the purpose of this subsection, activities of a financial nature shall include, but not be limited to, all forms of securities activities, including underwriting, distribution, and brokerage, together with such other activities as the Commissioner of Banks shall determine by regulation or order;

(3) Engaging in any other activity approved by the Commissioner of Banks.

(d) Any state or national bank subsidiary which engages in an activity subject to licensure and/or regulation under other than Chapter 53 of the General Statutes shall be subject to licensure and/or regulation on a basis that does not arbitrarily discriminate by the appropriate regulatory agency which licenses and/or regulates nonbanks which engage in the same activity.

(e) Unless otherwise notified by the Commissioner within 30 days following receipt of the written notice, a bank may complete its investment in the stock or assets of the other corporation, firm, partnership, or company, or commence a new activity through an existing subsidiary. The Commissioner may extend the 30-day period if the Commissioner determines that the proposed investment or activity raises issues which require additional information or additional time for analysis. If the 30-day period is extended, the bank may proceed with respect to the proposed investment or activity only upon written approval of the Commissioner of Banks.

(f) The Commissioner of Banks shall monitor the impact of investment activities of banks under this section on the safety and soundness of such banks. Any stocks owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the stocks, and if not so disposed of, they shall be charged to profit and loss account, and no longer carried on the books as an asset. The limit of time in which said stocks shall be disposed of or charged off the books of the bank may be extended by the Commissioner of Banks if in the Commissioner's judgment it is for the best interest of the bank that such extension be granted; provided that the limitations imposed in this section on the ownership of stock in or securities of corporations are suspended only to the extent that any bank operating under the supervision of the Commissioner of Banks may subscribe for and purchase shares of stock in or debentures, bonds, or other types of securities of any corporation organized under the laws of the United States for the purposes of insuring to depositors a part or all of their funds on deposit in banks where and to such extent as such stock or security ownership is required in order to obtain the benefits of such deposit insurance for its depositors."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1995.

S.B. 525 **CHAPTER 418**

AN ACT TO REQUIRE THE STATE HEALTH DIRECTOR TO PREPARE A MEDICAL AND HEALTH BENEFITS PLAN.

The General Assembly of North Carolina enacts:

Section 1. The State Health Director shall prepare a medical and health care plan that will help provide for persons in North Carolina whose employers pay all or part of the cost of medical and health care benefits for their employees, incentives to forego unnecessary medical treatment and to shop for the best value in cases where treatment is necessary. The plan should include provisions for long-term care and may contain the following components:

(1) Employers may set aside, each year, in an account for each of their employees a certain percentage of the amount that they currently or would spend for medical and health care benefits for each employee. This account will be an allowance for medical and health care for the employee during that year.

(2) Employers shall retain a sufficient percentage of the amount that they currently or would spend for medical and health care benefits for each employee to purchase or self-fund major medical and health care benefits, including comprehensive preventive care coverage, for all employees which will pay one hundred percent (100%) of the cost of any portion of an employee's medical and health care that exceeds the amount in the employee's medical and health care account.

(3) Any amount in an employee's medical and health care account that is unspent at the end of the year will belong to the employee with no restrictions on the purposes for which it may be used. Of any interest derived from the deposit of the funds held in trust for the health care accounts for all employees, one-half of the interest shall belong to the employee and one-half of the interest may be paid to the State to fund indigent health care.

(4) The amount in an employee's medical and health care account will not be subject to State taxation while it remains in the account, any amount spent from the account for medical and health care will be totally exempt from State income taxation, and any amount spent from the account for any purpose other than medical and health care will be fully subject to State income taxation, including any appropriate interest and penalties.

(5) Employers that provide medical and health care benefits to their employees in accordance with the plan will receive State tax credits against their income for the cost of these medical and health care benefits for each year that these benefits are provided.

Sec. 2. The State Health Director shall notify the Commissioner of Insurance of the minimum requirements for the plan required to be prepared by this act. The Commissioner of Insurance shall prepare a proposed plan incorporating these minimum requirements. The Secretary of the Department of Human Resources and the Secretary of the Department of Environment, Health, and Natural Resources shall provide the Commissioner of Insurance with any data or other information maintained by the Departments that would benefit the Commissioner of Insurance in preparing the proposed plan. The information provided shall include review of medical care savings plans developed by other states. The Commissioner of Insurance shall submit the proposed plan to the State Health Director no later than November 1, 1995, and the State Health Director shall consult with the Secretary of Revenue, persons representing the views of physicians, hospitals, health insurance companies, and health maintenance organizations, and any other agencies or entities as necessary to develop the plan. These agencies and entities consulted by the State Health Director shall provide full cooperation as requested.

Sec. 3. The State Health Director may revise the proposed plan, as necessary, and shall submit a report with a final plan, including alternative approaches to accomplishing the purposes of the plan, to the General Assembly on the first day of the 1996 Session of the General Assembly. The report shall include any proposed legislation necessary to implement the plan in North Carolina.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1995.

S.B. 558 **CHAPTER 419**

AN ACT TO PROVIDE FOR EXPEDITED EVICTION OF PERSONS ENGAGED IN DRUG-RELATED CRIMINAL ACTIVITY AND

OTHER CRIMINAL ACTIVITY THAT THREATENS THE HEALTH, SAFETY, OR PEACEFUL ENJOYMENT OF RENTAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 42 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7.

"Expedited Eviction of Drug Traffickers and Other Criminals.

"§ 42-59. *Definitions.*

As used in this Article:

(1) 'Complete eviction' means the eviction and removal of a tenant and all members of the tenant's household.

(2) 'Criminal activity' means (i) activity that would constitute a violation of G.S. 90-95 other than a violation of G.S. 90-95(a)(3), or a conspiracy to violate any provision of G.S. 90-95 other than G.S. 90-95(a)(3); or (ii) other criminal activity that threatens the health, safety, or right of peaceful enjoyment of the entire premises by other residents or employees of the landlord.

(3) 'Entire premises' or 'leased residential premises' means a house, building, mobile home, or apartment, whether publicly or privately owned, which is leased for residential purposes. These terms include the entire building or complex of buildings or mobile home park and all real property of any nature appurtenant thereto and used in connection therewith, including all individual rental units, streets, sidewalks, and common areas. These terms do not include a hotel, motel, or other guest house or part thereof rented to a transient guest.

(4) 'Felony' means a criminal offense that constitutes a felony under North Carolina law.

(5) 'Guest' means any natural person who has been given express or implied permission by a tenant, a member of the tenant's household, or another guest of the tenant to enter an individual rental unit or any portion of the entire premises.

(6) 'Individual rental unit' means an apartment or individual dwelling or accommodation which is leased to a particular tenant, whether or not it is used or occupied or intended to be used or occupied by a single family or household.

(7) 'Landlord' means a person, entity, corporation, or governmental authority or agency who or which owns, operates, or manages any leased residential premises.

(8) 'Partial eviction' means the eviction and removal of specified persons from a leased residential premises.

(9) 'Resident' means any natural person who lawfully resides in a leased residential premises who is not a signatory to a lease or otherwise has no contractual relationship to a landlord. The term includes members of the household of a tenant.

(10) 'Tenant' means any natural person or entity who is a named party or signatory to a lease or rental agreement, and who

occupies, resides in, or has a legal right to possess and use an individual rental unit.

"§ 42-59.1. *Statement of Public Policy.*

The General Assembly recognizes that the residents of this State have the right to the peaceful, safe, and quiet enjoyment of their homes. The General Assembly further recognizes that these rights, as well as the health, safety, and welfare of residents, are often jeopardized by the criminal activity of other residents of rented residential property, but that landlords are often unable to remove those residents engaged in criminal activity. In order to ensure that residents of this State can have the peaceful, safe, and quiet enjoyment of their homes, the provisions of this Article are deemed to apply to all residential rental agreements in this State.

"§ 42-60. *Nature of actions and jurisdiction.*

The causes of action established in this Article are civil actions to remove tenants or other persons from leased residential premises. These actions shall be brought in the district court of the county where the individual rental unit is located. If the plaintiff files the complaint as a small claim, the parties shall not be entitled to discovery from the magistrate. However, if such a case is filed originally in the district court or is appealed from the judgment of a magistrate for a new trial in the district court, all of the procedures and remedies in this Article shall be applicable.

"§ 42-61. *Standard of proof.*

The civil causes of action established in this Article shall be proved by a preponderance of the evidence, except as otherwise expressly provided in G.S. 42-64.

"§ 42-62. *Parties.*

(a) Who May Bring Action. A civil action pursuant to this Article may be brought by the landlord of a leased residential premises, or the landlord's agent, as provided for in G.S. 1-57 of the General Statutes and in Article 3 of this Chapter.

(b) Defendants to the Action. A civil action pursuant to this Article may be brought against any person within the jurisdiction of the court, including a tenant, adult or minor member of the tenant's household, guest, or resident of the leased residential premises. If any defendant's true name is unknown to the plaintiff, process may issue against the defendant under a fictitious name, stating it to be fictitious and adding an appropriate description sufficient to identify him or her.

(c) Notice to Defendants. A complaint initiating an action pursuant to this Article shall be served in the same manner as serving complaints in civil actions pursuant to G.S. 1A-1, Rule 4 and G.S. 42-29.

"§ 42-63. *Remedies and judicial orders.*

(a) Grounds for Complete Eviction. Subject to the provisions of G.S. 42-64 and pursuant to G.S 42-68, the court shall order the immediate eviction of a tenant and all other residents of the tenant's individual unit where it finds that:

(1) Criminal activity has occurred on or within the individual rental unit leased to the tenant; or

(2) The individual rental unit leased to the tenant was used in any way in furtherance of or to promote criminal activity; or

(3) The tenant, any member of the tenant's household, or any guest has engaged in criminal activity on or in the immediate vicinity of any portion of the entire premises; or

(4) The tenant has given permission to or invited a person to return or reenter any portion of the entire premises, knowing that the person has been removed and barred from the entire premises pursuant to this Article or the reasonable rules and regulations of a publicly assisted landlord; or

(5) The tenant has failed to notify law enforcement or the landlord immediately upon learning that a person who has been removed and barred from the tenant's individual rental unit pursuant to this Article has returned to or reentered the tenant's individual rental unit.

(b) Grounds for Partial Eviction and Issuance of Removal Orders. The court shall, subject to the provisions of G.S. 42-64, order the immediate removal from the entire premises of any person other than the tenant, including an adult or minor member of the tenant's household, where the court finds that such person has engaged in criminal activity on or in the immediate vicinity of any portion of the leased residential premises. Persons removed pursuant to this section shall be barred from returning to or reentering any portion of the entire premises.

(c) Conditional Eviction Orders Directed Against the Tenant. Where the court finds that a member of the tenant's household or a guest of the tenant has engaged in criminal activity on or in the immediate vicinity of any portion of the leased residential premises, but such person has not been named as a party defendant, has not appeared in the action or otherwise has not been subjected to the jurisdiction of the court, a conditional eviction order issued pursuant to subsection (b) of this section shall be directed against the tenant, and shall provide that as an express condition of the tenancy, the tenant shall not give permission to or invite the barred person or persons to return to or reenter any portion of the entire premises. The tenant shall acknowledge in writing that the tenant understands the terms of the court's order, and that the tenant further understands that the failure to comply with the court's order will result in the mandatory termination of the tenancy pursuant to G.S. 42-68.

"*§ 42-64. Affirmative defense or exemption to a complete eviction.*

(a) Affirmative Defense. The court shall refrain from ordering the complete eviction of a tenant pursuant to G.S. 42-63(a) where the tenant has established that the tenant was not involved in the criminal activity and that:

(1) The tenant did not know or have reason to know that criminal activity was occurring or would likely occur on or within the individual rental unit, that the individual rental unit was used in any way in furtherance of or to promote criminal activity, or that any member of the tenant's household or any guest has engaged in criminal activity on or in the immediate vicinity of any portion of the entire premises; or

(2) The tenant had done everything that could reasonably be expected under the circumstances to prevent the commission of the criminal activity, such as requesting the landlord to remove the offending

household member's name from the lease, reporting prior criminal activity to appropriate law enforcement authorities, seeking assistance from social service or counseling agencies, denying permission, if feasible, for the offending household member to reside in the unit, or seeking assistance from church or religious organizations.

Notwithstanding the court's denial of eviction of the tenant, if the plaintiff has proven that an evictable offense under G.S. 42-63 was committed by someone other than the tenant, the court shall order such other relief as the court deems appropriate to protect the interests of the landlord and neighbors of the tenant, including the partial eviction of the culpable household members pursuant to G.S. 42-63(b) and conditional eviction orders under G.S. 42-63(c).

(b) Subsequent Affirmative Defense to a Complete Eviction. The affirmative defense set forth in subsection (a) of this section shall not be available to a tenant in a subsequent action brought pursuant to this Article unless the tenant can establish by clear and convincing evidence that no reasonable person could have foreseen the occurrence of the subsequent criminal activity or that the tenant had done everything reasonably expected under the circumstances to prevent the commission of the second criminal activity.

(c) Exemption. Where the grounds for a complete eviction have been established, the court shall order the eviction of the tenant unless, taking into account the circumstances of the criminal activity and the condition of the tenant, the court is clearly convinced that immediate eviction or removal would be a serious injustice, the prevention of which overrides the need to protect the rights, safety, and health of the other tenants and residents of the leased residential premises. The burden of proof for the exemption set forth shall be by clear and convincing evidence.

"*§ 42-65. Obstructing the execution or enforcement of a removal or eviction order.*

Any person who knowingly violates any order issued pursuant to this Article or who knowingly interferes with, obstructs, impairs, or prevents any law enforcement officer from enforcing or executing any order issued pursuant to this Article, shall be subject to criminal contempt under Article 1 of Chapter 5A of the General Statutes. Nothing in this section shall be construed in any way to preclude or preempt prosecution for any other criminal offense.

"*§ 42-66. Motion to enforce eviction and removal orders.*

(a) A motion to enforce an eviction or removal order issued pursuant to G.S. 42-63(b) or (c) shall be heard on an expedited basis and within 15 days of the service of the motion.

(b) Mandatory Eviction. The court shall order the immediate eviction of the tenant where it finds that:

(1) The tenant has given permission to or invited any person removed or barred from the leased residential premises pursuant to this Article to return to or reenter any portion of the premises; or

(2) The tenant has failed to notify appropriate law enforcement authorities or the landlord immediately upon learning that any

person who had been removed and barred pursuant to this Article has returned to or reentered the tenant's individual rental unit; or

(3) The tenant has otherwise knowingly violated an express term or condition of any order issued by court pursuant to this Article.

"§ 42-67. *Impermissible defense.*

It shall not be a defense to an action brought pursuant to this Article that the criminal activity was an isolated incident or otherwise has not recurred. Nor is it a defense that the person who actually engaged in the criminal activity no longer resides in the tenant's individual rental unit. However, evidence of such facts may be admissible if offered to support affirmative defenses or grounds for an exemption pursuant to G.S. 42-64.

"§ 42-68. *Expedited proceedings.*

Where the complaint is filed as a small claim, the expedited process for summary ejectment, as provided in Article 3 of this Chapter and Chapter 7A of the General Statutes, applies. Where the complaint is filed initially in the district court or a judgment by the magistrate is appealed to the district court, the procedure in G.S. 42-34(b) through (g), if applicable, and the following procedures apply:

(1) Expedited Hearing. When a complaint is filed initiating an action pursuant to this Article, the court shall set the matter for a hearing which shall be held on an expedited basis and within the first term of court falling after 30 days from the service of the complaint on all defendants or from service of notice of appeal from a magistrate's judgment, unless either party obtains a continuance. However, where a defendant files a counterclaim, the court shall reset the trial for the first term of court falling after 30 days from the defendant's service of the counterclaim.

(2) Standards for Continuances. The court shall not grant a continuance, nor shall it stay the civil proceedings pending the disposition of any related criminal proceedings, except as required to complete permitted discovery, to have the plaintiff reply to a counterclaim, or for compelling and extraordinary reasons or on application of the district attorney for good cause shown.

(3) When Presented. The defendant in an action brought in district court pursuant to this Article shall serve an answer within 20 days after service of the summons and complaint, or within 20 days after service of the appeal to district court when the action was initially brought in small claims court. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer.

(4) Extensions of Time for Filing. The parties to an action brought pursuant to this Article shall not be entitled to an extension of time for completing an act required by subdivision (3) of this section, except for compelling and extraordinary reasons.

(5) Default. A party to an action brought pursuant to this Article who fails to plead in accordance with the time periods in subdivision (3) of this section shall be subject to the provisions of G.S. 1A-1, Rule 55.

(6) Rules of Civil Procedure. Unless otherwise provided for in this Article, G.S. 1A-1, the Rules of Civil Procedure, shall apply in the district court to all actions brought pursuant to this Article.

"§ *42-69. Relation to criminal proceedings.*

(a) Criminal Proceedings, Conviction, or Adjudication Not Required. The fact that a criminal prosecution involving the criminal activity is not commenced or, if commenced, has not yet been concluded or has terminated without a conviction or adjudication of delinquency shall not preclude a civil action or the issuance of any order pursuant to this Article.

(b) Effect of Conviction or Adjudication. Where a criminal prosecution involving the criminal activity results in a final criminal conviction or adjudication of delinquency, such adjudication or conviction shall be considered in the civil action as conclusive proof that the criminal activity occurred.

(c) Admissibility of Criminal Trial Recordings or Transcripts. Any evidence or testimony admitted in the criminal proceeding, including recordings or transcripts of the adult or juvenile criminal proceedings, whether or not they have been transcribed, may be admitted in the civil action initiated pursuant to this Article.

(d) Use of Sealed Criminal Proceeding Records. In the event that the evidence or records of a criminal proceeding which did not result in a conviction or adjudication of delinquency have been sealed by court order, the court in a civil action brought pursuant to this Article may order such evidence or records, whether or not they have been transcribed, to be unsealed if the court finds that such evidence or records would be relevant to the fair disposition of the civil action.

"§ *42-70. Discovery.*

(a) The parties to an action brought pursuant to this Article shall be entitled to conduct discovery, if the action is filed originally in or appealed to the district court, only in accordance with this section.

(b) Any defendant must initiate all discovery within the time allowed by this Article for the filing of an answer or counterclaim.

(c) The plaintiff must initiate all discovery within 20 days of service of an answer or counterclaim by a defendant.

(d) All parties served with interrogatories, requests for production of documents, and requests for admissions under G.S. 1A-1, Rules 33, 34, and 36 shall serve their responses within 20 days.

(e) Upon application by the plaintiff, or agreement of the parties, the court shall issue a preliminary injunction against all alleged illegal activity by the defendant or other identified parties who are residents of the individual rental unit or guests of defendants, pending the completion of discovery and any other wait before the trial has occurred.

"§ *42-71. Protection of threatened witnesses or affiants.*

If proof necessary to establish the grounds for eviction depends, in whole or in part, upon the affidavits or testimony of witnesses who are not peace officers, the court may, upon a showing of prior threats of violence or acts of violence by any defendant or any other person, issue orders to protect those witnesses, including the nondisclosure of the name, address, or any other information which may identify those witnesses.

"§ 42-72. *Availability of law enforcement resources to plaintiffs or potential plaintiffs.*

A law enforcement agency may make available to any person or entity authorized to bring an action pursuant to this Article any police report or edited portion thereof, or forensic laboratory report or edited portion thereof, concerning criminal activity committed on or in the immediate vicinity of the leased residential premises. A law enforcement agency may also make any officer or officers available to testify as a fact witness or expert witness in a civil action brought pursuant to this Article. The agency shall not disclose such information where, in the agency's opinion, such disclosure would jeopardize an investigation, prosecution, or other proceeding, or where such disclosure would violate any federal or State statute.

"§ 42-73. *Collection of rent.*

A landlord shall be entitled to collect rent due and owing with knowledge of any illegal acts that violate the provisions of this act without such collection constituting a waiver of the alleged defaults.

"§ 42-74. *Preliminary or emergency relief.*

The district court shall have the authority at any time to issue a temporary restraining order, grant a preliminary injunction, or take such other actions as the court deems necessary to enjoin or prevent the commission of criminal activity on or in the immediate vicinity of leased residential premises, or otherwise to protect the rights and interests of all tenants and residents. A violation of any such duly issued order or preliminary relief shall subject the violator to civil or criminal contempt.

"§ 42-75. *Cumulative remedies.*

The causes of action and remedies authorized by this Article shall be cumulative with each other and shall be in addition to, not in lieu of, any other causes of action or remedies which may be available at law or equity, including causes of action and remedies based on express provisions of the lease not contrary to this Article.

"§ 42-76. *Civil immunity.*

Any person or organization who, in good faith, institutes, participates in, or encourages a person or entity to institute or participate in a civil action brought pursuant to this Article, or who in good faith provides any information relied upon by any person or entity in instituting or participating in a civil action pursuant to this Article shall have immunity from any civil liability that might otherwise be incurred or imposed. Any such person or organization shall have the same immunity from civil liability with respect to testimony given in any judicial proceeding conducted pursuant to this Article."

Sec. 1.1. G.S. 42-25.6 reads as rewritten:

"§ 42-25.6. *Manner of ejectment of residential tenants.*

It is the public policy of the State of North Carolina, in order to maintain the public peace, that a residential tenant shall be evicted, dispossessed or otherwise constructively or actually removed from his dwelling unit only in accordance with the procedure prescribed in Article 3 or Article 7 of this Chapter."

Sec. 2. The provisions of this act are severable, and if any provision of this act, or the application of any provision of this act to any person or

circumstance, is held unconstitutional or otherwise invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application.

Sec. 3. This act becomes effective October 1, 1995, and applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 11th day of July, 1995.

S.B. 1080 **CHAPTER 420**

AN ACT TO PLACE CERTAIN RESTRICTIONS ON THE SITING OF SWINE HOUSES AND LAGOONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 67.
"Swine Farms.

"§ *106-800. Title.*

This Article shall be known as the 'Swine Farm Siting Act'.

"§ *106-801. Purpose.*

The General Assembly finds that the siting of swine houses and lagoons for larger farms can assist in the development of pork production to contribute to the economic development of the State while minimizing any interference with the use and enjoyment of adjoining property.

"§ *106-802. Definitions.*

As used in this Article, unless the context clearly requires otherwise:

(1) 'Lagoon' means a confined body of water to hold animal byproducts including bodily waste from animals or a mixture of waste with feed, bedding, litter or other agricultural materials without discharge to surface waters of the State except in the event of a storm more severe than the 25-year, 24-hour storm.

(2) 'New swine farm' means any swine farm whose operations were sited on or after October 1, 1995. Renovation and reconstruction of existing farms does not constitute a 'new swine farm'.

(3) 'Occupied residence' means a dwelling actually inhabited by a person on a continuous basis as exemplified by a person living in his home.

(4) 'Siting' or 'site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Natural Resources Conservation Service or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission and either of which report provides the basis for certification by the Division of Environmental Management pursuant to the rules appearing in the

North Carolina Administrative Code governing waste not discharged to surface waters.

(5) 'Swine farm' means a tract of land devoted to raising 250 or more animals of the porcine species.

(6) 'Swine house' means a building that shelters porcine animals on a continuous basis.

"*§ 106-803. Requirements for siting swine houses and lagoons.*

(a) A swine house or a lagoon that is a component of a swine farm shall be located at least 1,500 feet from any occupied residence; at least 2,500 feet from any school, hospital, or church; and at least 100 feet from any property boundary. The outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm shall be at least 50 feet from any residential property boundary and from any perennial stream or river, other than an irrigation ditch or canal.

(b) A swine house or a lagoon that is a component of a swine farm may be sited closer to a residence, school, hospital, church, or a property boundary than is allowed under subsection (a) of this section if written permission is given by the owner of the property and recorded with the Register of Deeds."

Sec. 2. This act becomes effective October 1, 1995, and applies to any new swine farm for which a site evaluation is conducted on or after that date.

In the General Assembly read three times and ratified this the 11th day of July, 1995.

S.B. 499 **CHAPTER 421**

AN ACT TO ALLOW THE PAYMENT OF ADDITIONAL BENEFITS TO RESCUE AND EMERGENCY MEDICAL SERVICES WORKERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-88-5 reads as rewritten:

"*§ 58-88-5. Rescue Squad Workers' Relief Fund; trustees; disbursement of funds.*

(a) The 'Rescue Squad Workers' Relief Fund' is created. It consists of the revenue credited to the Fund under G.S. 20-183.7(c) and shall be used for the purposes set forth in this Article.

(b) The Executive Committee of the Association shall be the Board of Trustees of the Fund. The Board shall consist of the Commander, Vice-Commander, Secretary-Treasurer, and two past Commanders of the Association. The Commander shall be the Chairman of the Board. The Commander, Vice-Commander, and Secretary-Treasurer shall appoint the two past Commanders of the Association, who shall serve at the pleasure of the appointing officers.

(c) The Commissioner of Insurance has exclusive control of the Fund and shall disburse revenue in the Fund to the Association only for the following purposes:

(1) To safeguard any rescue or EMS worker in active service from financial loss, occasioned by sickness contracted or injury

received while in the performance of his or her duties as a rescue or EMS worker.

(2) To provide a reasonable support for those persons actually dependent upon the services of any rescue or EMS worker who may lose his or her life in the service of his or her town, county, city, or the State, either by accident or from disease contracted or injury received by reason of such service. The amount is to be determined according to the earning capacity of the deceased.

(3) To award scholarships to children of members, deceased members or retired members in good standing, for the purpose of attending a two year or four year college or university, and for the purpose of attending a two year course of study at a community college or an accredited trade or technical school, any of which is located in the State of North Carolina. Continuation of the payment of educational benefits for children of active members shall be conditioned on the continuance of active membership in the rescue or EMS service by the parent or parents.

(4) To pay death benefits to those persons who were actually dependent upon any member killed in the line of duty.

(4a) To pay additional benefits approved by the Board of Trustees of the Fund to rescue and EMS workers who are eligible pursuant to G.S. 58-88-10 and who are members of the Association.

(5) Notwithstanding any other provision of law, no expenditures shall be made pursuant to subdivisions (1), (2), (3), ~~and (4)~~ (4), and (4a) of this subsection unless the Board has certified that ~~such~~ the expenditures will not render the Fund actuarially unsound for the purpose of providing the benefits set forth in subdivisions (1), (2), (3), ~~and (4).~~ (4), and (4a). If, for any reason, funds made available for subdivisions (1), (2), (3), ~~and (4)~~ (4), and (4a) are insufficient to pay in full any benefit, the benefits pursuant to subdivisions (1), (2), (3), ~~and (4)~~ (4), and (4a) shall be reduced pro rata for as long as the amount of insufficient funds exists. No claims shall accrue with respect to any amount by which a benefit under subdivisions (1), (2), (3), ~~and (4)~~ (4), and (4a) has been reduced."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1995.

S.B. 798 **CHAPTER 422**

AN ACT AUTHORIZING SANITARY DISTRICTS TO PROVIDE STREETS AND LAW ENFORCEMENT SERVICES AND ALLOWING SMALL SANITARY DISTRICTS TO COMPENSATE BOARD MEMBERS IN THE SAME MANNER AS LARGE SANITARY DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-55 is amended by adding two new subdivisions to read:

"(23) To acquire (by purchase, lease, gift, or otherwise, but not by condemnation), construct, maintain, operate, and regulate roads and streets within the sanitary district which are not State-maintained. Not all of these powers need be exercised.

(24) To contract for security personnel or to provide for law enforcement within the district to the same extent that a city or town is authorized to provide for law enforcement pursuant to Article 13 of Chapter 160A of the General Statutes. For the purpose of this subdivision, any reference in Article 13 of Chapter 160A of the General Statutes to 'city' is to be interpreted to include a sanitary district."

Sec. 2. G.S. 130A-55(15) reads as rewritten:

"(15) To use the income of the district, and if necessary, to levy and collect taxes upon all the taxable property within the district sufficient to pay the costs of collecting and disposing of garbage, waste and other refuse, ~~and~~ to provide fire protection and rescue services in the ~~district.~~ district, to acquire, construct, maintain, operate, and regulate roads and streets within the district which are not State-maintained, and to provide for law enforcement within the district. Taxes shall be levied and collected at the same time and in the same manner as taxes for debt service as provided in G.S. 130A-62."

Sec. 3. G.S. 130A-55(24), as enacted by this act, shall expire on July 1, 1997.

Sec. 4. Effective July 1, 1997, G.S. 130A-55(15), as amended by this act, reads as rewritten:

"(15) To use the income of the district, and if necessary, to levy and collect taxes upon all the taxable property within the district sufficient to pay the costs of collecting and disposing of garbage, waste and other refuse, to provide fire protection and rescue services in the district, and to acquire, construct, maintain, operate, and regulate roads and streets within the ~~district, and to provide for law enforcement within the~~ district."

Sec. 5. G.S. 130A-56 reads as rewritten:

"*§ 130A-56. Election of officers; board ~~staff,~~ compensation.*

(a) Upon election, a sanitary district board shall meet and elect one of its members as chairperson and another member as secretary. ~~In sanitary districts with a population of less than 15,000, each member of the board may receive a per diem compensaton and other compensation as provided for members of State boards under G.S. 138-5, payable from the funds of the district.~~

(b) The board may employ a ~~clerk, stenographer~~ clerk or other assistants as necessary and may fix duties of and compensation for employees. A sanitary district board may remove employees and fill vacancies.

(c) The board may, by ordinance, fix the compensation of its members in an amount not to exceed one hundred fifty dollars ($150.00) per month, payable from the funds of the district, but no increase may become effective

earlier than the first meeting of the board following the next election of board members after adoption of the ordinance. Until adoption of an ordinance under this subsection, ~~the compensation of members of sanitary district boards shall remain at the amount payable by law immediately prior to March 25, 1985. This subsection applies only to sanitary districts with a population of 15,000 or over.~~ each member of the board may receive compensation as provided for members of State boards under G.S. 138-5, payable from funds of the district."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1995.

S.B. 815 **CHAPTER 423**

AN ACT TO AMEND THE LAW RELATING TO VOTING PRECINCTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-128 reads as rewritten:

"§ *163-128. Election precincts and voting places established or altered.*

(a) Each county shall be divided into a convenient number of precincts for the purpose of ~~voting, and there shall be at least one precinct encompassed within the territory of each township; provided, however, that upon~~ voting. Upon a resolution adopted by the county board of elections and approved by the Secretary-Director of the State Board of Elections voters from a given precinct ~~within a township~~ may be temporarily transferred, for the purpose of voting, to ~~a precinct in an adjacent township,~~ an adjacent precinct. Any such transfers shall be for the period of time equal only to the term of office of the county board of elections making such transfer. When such a resolution has been adopted by the county board of elections to assign voters from more than one ~~township~~ precinct to the same precinct, then the county board of elections shall maintain separate registration and voting records, consistent with the procedure prescribed by the State Board of Elections, so as to properly identify the ~~township~~ precinct in which such voters reside. ~~Except as provided in G.S. 163-132.2(a)(1), the~~ The polling place for a precinct shall be located within the ~~precinct,~~ precinct or on a lot or tract adjoining the precinct.

Except as provided by Article 12A of this Chapter, the county board of elections shall have power from time to time, by resolution, to establish, alter, discontinue, or create such new election precincts or voting places as it may deem expedient. Upon adoption of a resolution establishing, altering, discontinuing, or creating a precinct or voting place, the board shall give 45 days' notice thereof prior to the next primary or election. Notice shall be given by advertisement in a newspaper having general circulation in the county, by posting a copy of the resolution at the courthouse door, and by mailing a copy of the resolution to the chairman of every political party in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.

(b) Each county board of elections shall prepare a map of the county on which the precinct boundaries are drawn or described, shall revise the map when boundaries are changed, and shall keep a copy of the current map on file and posted for public inspection at the office of the Board of Elections, and shall file a copy with the State Board of Elections."

Sec. 2. Article 12A of Chapter 163 of the General Statutes reads as rewritten:

"ARTICLE 12A.

"Precinct Boundaries.

"*§ 163-132.1. Participation in ~~Block Boundary Suggestion Program~~ 2000 Census Redistricting Data Program of the United States Bureau of the Census.*

(a) Purpose. -- The State of North Carolina shall participate in the 2000 Census Redistricting Data Program, conducted pursuant to P.L. 94-171, of the United States Bureau of the Census, including Phase I (Block Boundary Suggestion Program) and Phase II (concerning the designation of precincts on 2000 Census maps or databases), so that the State will receive 2000 Census data by voting precinct and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

(b) Phase I (Block Boundary Suggestion Program). -- The State ~~of North Carolina~~ shall participate in the Block Boundary Suggestion Program of the United States Bureau of the Census ~~to the end~~ so that the maps the Census Bureau will use in the 2000 Census will contain adequate features to permit reporting of Census data by precinct for use in the 2001 redistricting efforts. ~~Not later than December 1, 1995, the~~ The Legislative Services Office shall send preliminary maps produced by the Census Bureau in preparation for the 2000 ~~Census~~ Census, as soon as practical after the maps are available, to the county boards of elections to determine which of their precincts have boundaries that are not coterminous with a physical feature, a current township boundary, or a current municipal boundary, as shown on those preliminary 2000 Census maps. The Legislative Services Office shall:

(1) Assist county boards of elections in identifying the precincts with boundaries not shown on the preliminary Census maps and in identifying physical features the county boards may wish to have available for future precinct boundaries;

(2) Place those boundaries and features on maps deemed appropriate by the State Board;

(3) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all physical features the county boards have identified as current or potential precinct boundaries; and

(4) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all other physical features already on ~~U.S.~~ 1990 Census ~~Bureau~~ maps.

(c) Phase II. -- The State shall participate in Phase II of the 2000 Census Redistricting Data Program so that, to the extent practical, the precinct boundaries of all North Carolina counties will appear on the 2000 Census maps or database. The State's effort shall be conducted as follows:

(1) By January 1, 1998, or as soon thereafter as they become available, the Legislative Services Office shall send to the county boards of elections the Census Bureau's official block maps, on paper or electronically, to be used in the 2000 Census.

(2) After receiving the maps, the county boards of elections shall designate their precinct lines along the block boundary lines on the maps. Where necessary, the county boards of elections shall alter precincts, including any precincts approved under the provisions of G.S. 163-132.1A, 163-132.2, or 163-132.3 or designated by local act, to conform to Census block boundaries as shown on the official block maps to be used for the 2000 Census and to consist only of contiguous territory. The county boards of elections, at a time deemed necessary by the Executive Secretary-Director of the State Board of Elections, shall file with the Legislative Services Office the maps sent to them and marked by them pursuant to this subsection.

(3) After examining the returned maps, the Legislative Services Office shall submit to the Executive Secretary-Director of the State Board of Elections its opinion as to whether the county board of elections has complied with the provisions of this subsection, with notations as to where those boundaries do not comply with these standards.

(4) If the Executive Secretary-Director determines that the county board of elections has complied, he shall approve the precinct boundaries as filed and those precincts shall be the official precincts.

(5) If the Executive Secretary-Director determines that the county board of elections has not complied, he shall not approve those precinct boundaries but shall alter the precinct boundaries so that each precinct consists solely of contiguous territory and that each precinct's boundaries are coterminous with 2000 Census block boundaries nearest to the precinct boundaries shown by the county boards on the maps. These altered precincts shall then be the official precincts.

(6) Upon the adoption of a resolution by a county board of elections and instead of altering precinct lines as required by G.S. 163-132.1(c)(5), the Executive Secretary-Director may combine for Census reporting purposes only two or more adjacent precincts of the county into a Combined Reporting Unit, if the Executive Secretary-Director finds that:

a. The boundaries of the Combined Reporting Unit conform with the Census block boundaries as shown on the official block maps to be used in the 2000 Census;

b. The Combined Reporting Unit consists only of contiguous territory;

c. The precincts of which the Combined Reporting Unit consists were bounded as of January 1, 1996, by ridgelines, as certified on official county maps by the county manager of the relevant county, or if there is no county manager the chair of the board of commissioners, and the boundaries failed to

comply with subdivision (2) of this subsection only because those ridgelines were unrecognized as Census block boundaries in the 2000 official Census maps;

d. The Combined Reporting Unit does not contain a majority of the territory of more than one township; and

e. To alter those precinct boundaries would result in significant voter dislocation.

If the Executive Secretary-Director recognizes a Combined Reporting Unit for specific precincts, the official boundaries of those individual precincts forming the Combined Reporting Unit shall be those which the Legislative Services Office submitted to the Executive Secretary-Director under subdivision (3) of this subsection.

(7) The Executive Secretary-Director shall file the completed maps with the Census Bureau and request that the Census Bureau provide summaries of 2000 Census data by precinct and Combined Reporting Units.

(d) Freezing of Precincts. -- Notwithstanding the provisions of G.S. 163-132.3, after the Executive Secretary-Director approves the precincts in accordance with subsection (c) of this section and before January 2, 2000, no county board of elections may establish, alter, discontinue, or create any precinct except by division of one precinct into two or more precincts using 2000 Census block boundaries for that division. Provided that, whenever an annexation ordinance adopted under Parts 1, 2, or 3 of Article 4A of Chapter 160A of the General Statutes, or a local act of the General Assembly annexing property to a municipality, becomes effective during the period beginning with the date of the annexation as reported through the U.S. Census Bureau's 1998 Boundary and Annexation Survey and ending January 2, 2000, and any part of the boundary of the area being annexed which is actually contiguous to the city is also a precinct boundary for elections administered by the county board of elections then the annexed area is automatically moved into the 'city precinct', provided that if the annexed area is adjacent to more than one city precinct, the board of elections shall place the area in any one or more of the adjacent city precincts. The county board of elections may delay the effective date of any change under this subsection to a date not later than January 1, 2002.

(e) Municipal and Township Boundaries. -- Notwithstanding the provisions of subsections (c) and (d) of this section, the county boards of elections may designate precinct boundaries on municipal or township boundaries that are not designated on the 2000 official Census block maps, according to directives promulgated by the Executive Secretary-Director of the State Board of Elections and adopted to insure that all precincts shall be included on the 2000 Census database.

(f) Additional Rules. -- In addition to the directives promulgated by the Executive Secretary-Director of the State Board of Elections under G.S. 163-132.4, the Legislative Services Commission may promulgate rules to implement this section.

"*§ 163-132.1A. Precinct boundaries for certain counties.*

(a) The boundaries of precincts for the counties listed in subsection (b) of this section are those recorded in the Legislative Services Office's automated redistricting system as of May 1, 1991, except as changed in accordance with G.S. 163-132.3, and except in Caldwell County, the boundaries of Lenoir #3, North Catawba, Gamewell #1, and Gamewell #2 Precincts shall be as provided on the precinct map of the county adopted by the Caldwell County Board of Elections and in effect on January 1, 1992, unless changed in accordance with ~~G.S. 163-132.3,~~ G.S. 163-132.1 or G.S. 163-132.3, whichever occurs later.

(b) This section shall apply only to the following counties: Alamance, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Chowan, Cleveland, Craven, Cumberland, Davidson, Duplin, Durham, Edgecombe, Forsyth, Gaston, Granville, Guilford, Halifax, Harnett, Henderson, Iredell, Johnston, Jones, Lenoir, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pender, Pitt, Randolph, Richmond, Robeson, Rockingham, Rowan, Sampson, Scotland, Surry, Union, Wake, Washington, Wayne, Wilkes, Wilson, and Yancey.

"§ *163-132.2. Precinct boundaries for other counties.*

(a) The Legislative Services Office shall send as directed by the schedule contained in subsection (g) of this section the relevant copies of the United States Census Bureau's official census block maps of the 1990 United States Census to each county board of elections. The county board of elections shall:

(1) Alter, where necessary, precinct boundaries to be coterminous with those of:
   a. Townships, as certified by the county manager, or the chairman of the board of county commissioners if there is not a county manager, on the official map of the county;
   b. The census blocks established under the latest U.S. Census;
   c. The following visible physical features, readily distinguishable upon the ground:
      1. Roads or streets;
      2. Water features or drainage features;
      3. Ridgelines;
      4. Ravines;
      5. Jeep trails;
      6. Rail features;
      7. Above-ground power lines; or
      8. Major footpaths

      as certified by the North Carolina Department of Transportation on its highway maps or the county manager of the relevant county or, if there is no county manager, the chair of the county board of commissioners, on official county maps.
   d. Municipalities, as certified by the city clerk on the official map of the city; or
   e. A combination of these boundaries;

   ~~Provided that if, as a result of the alteration, the polling place is no longer in the precinct, it may continue to be the polling place~~

~~as long as the lot or tract on which the polling place is situated adjoins the precinct;~~

(1a) Alter, where necessary, precinct boundaries so that each precinct is composed solely of contiguous territory;

(2) Mark all precinct boundaries on the maps sent by the Legislative Services ~~Office~~, Office or on other maps or electronic databases approved by the Executive Secretary-Director, showing the precinct boundaries in effect as of the time of marking, but with any changes effective at a later time as provided by subsection (d) of this section; and

(3) File, at a time deemed necessary by the Executive Secretary-Director of the State Board of Elections, with the State Board and the Legislative Services Office the maps identifying the precinct boundaries. The Executive Secretary-Director may require a county board of elections to file a written description of the boundaries of any precinct or part thereof.

(b) The Executive Secretary-Director of the State Board of Elections and the Legislative Services Office shall examine the returned maps and their written descriptions. After its examination of the maps and their written descriptions, the Legislative Services Office shall submit to the Executive Secretary-Director of the State Board of Elections its opinion as to whether the county board of elections has complied with the provisions of subsection (a) of this section, with notations as to where those boundaries do not comply with these standards. If the Executive Secretary-Director of the State Board determines that the county board of elections has complied with the provisions of subsection (a) of this section, the Executive Secretary-Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.

(c) If the Executive Secretary-Director of the State Board determines that the county board of elections has not complied with the provisions of subsection (a) of this section, he shall not approve those precinct boundaries but shall alter the precinct boundaries so that each precinct consists solely of contiguous territory and that each precinct's boundaries are coterminous with those boundaries set forth in subsection (a)(1) of this section nearest to those existing precinct boundaries. These altered precincts shall then be the official precincts.

(d) The changes in precinct boundaries under subsections (b) and (c) of this section shall be made effective not later than January 1, 1997; unless the change would result in placing a precinct in more than one State House of Representatives, State Senate, or Congressional district, in which case it shall be made effective not later than January 1, 2002.

(e), (f) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 927, s. 1.

(g) The Legislative Services Office shall send maps, under subsection (a) of this section, to the counties named below by the dates indicated:

(1) Maps to be sent not later than January 1, 1993, to the following counties: Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Currituck, Cherokee, Clay, Franklin, Gates, and Hoke;

(2) Maps to be sent not later than January 1, 1994, to the following counties: Columbus, Dare, Davie, Graham, Greene, Haywood, Hertford, Hyde, Jackson, Lee, Lincoln, Madison, Martin, Mitchell, Montgomery, Northampton, and Pasquotank; and

(3) Maps to be sent not later than January 1, 1995, to the following counties: Macon, McDowell, Moore, Pamlico, Perquimans, Person, Polk, Rutherford, Stanly, Stokes, Swain, Transylvania, Tyrrell, Vance, Warren, Watauga, and Yadkin.

(h) This section shall apply only to the following counties: Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Cherokee, Clay, Columbus, Currituck, Dare, Davie, Franklin, Gates, Graham, Greene, Haywood, Hertford, Hoke, Hyde, Jackson, Lee, Lincoln, Macon, Madison, Martin, McDowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Perquimans, Person, Polk, Rutherford, Stanly, Stokes, Swain, Transylvania, Tyrrell, Vance, Warren, Watauga, and Yadkin.

(i) Any county board of elections whose precincts were not approved by the Executive Secretary-Director under the provisions of this section during the year by which maps were to be sent to the county under subsection (g) of this section shall submit precinct boundary changes that comply with subsection (a) of this section to the Legislative Services Office before January 1, 1996, according to directives promulgated by the Executive Secretary-Director.

"*§ 163-132.3. Alterations to approved precinct boundaries.*

(a) No county board of elections of a county listed in G.S. 163-132.1A(b), after January 1, 1990, and no county board of elections of a county listed in G.S. 163-132.2(h), after its precinct boundaries are approved pursuant to G.S. 163-132.2, may change any precinct boundary unless the proposed new precinct consists solely of contiguous territory and its new boundaries are coterminous with those of:

(1) Townships, as certified by the county manager, or the chairman of the board of county commissioners if there is not a county manager, on the official map of the county;

(2) The census blocks established under the latest U.S. ~~Census;~~ Census or the boundaries contained on the latest preliminary U.S. Census maps, issued under P.L. 94-171, whichever occurs later;

(3) The following visible physical features, readily distinguishable upon the ground:

a. Roads or streets;
b. Water features or drainage features;
c. Ridgelines;
d. Ravines;
e. Jeep trails;
f. Rail features;
g. Above-ground power lines; or
h. Major footpaths

as certified by the North Carolina Department of Transportation on its highway maps or the county manager of the relevant county or,

if there is no county manager, the chair of the county board of commissioners, on official county maps.

(4) Municipalities, as certified by the city clerk on the official map of the city; or

(5) A combination of these boundaries.

The county boards of elections shall report precinct boundary changes by filing with the Legislative Services Office on current official census maps or maps certified by the North Carolina Department of Transportation or the county's planning department or on other maps or electronic databases approved by the Executive Secretary-Director the new boundaries of these precincts. The Executive Secretary-Director may require a county board of elections to file a written description of the boundaries of any precinct or part thereof. No newly created or altered precinct boundary is effective until approved by the Executive Secretary-Director of the State Board as being in compliance with this subsection.

(b) The Executive Secretary-Director of the State Board of Elections and the Legislative Services Office shall examine the maps of the proposed new or altered precincts and any required written descriptions. After its examination of the maps and their written descriptions, the Legislative Services Office shall submit to the Executive Secretary-Director of the State Board of Elections its opinion as to whether all of the proposed precinct boundaries are in compliance with subsection (a) of this section, with notations as to where those boundaries do not comply with these standards. If the Executive Secretary-Director of the State Board determines that all precinct boundaries are in compliance with this section, the Executive Secretary-Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.

(c) If the Executive Secretary-Director of the State Board determines that the proposed precinct boundaries are not in compliance with subsection (a) of this section, he shall not approve those precinct boundaries. He shall notify the county board of elections of his disapproval specifying the reasons. The county board of elections may then resubmit new precinct maps and written descriptions to cure the reasons for their disapproval.

"§ *163-132.4. Directives.*

The Executive Secretary-Director of the State Board of Elections may promulgate directives concerning its duties and those of the county boards of elections under this Article.

"§ *163-132.5. Cooperation of State and local agencies.*

The State Budget Office, the Department of Transportation and county and municipal planning departments shall cooperate and assist the Legislative Services Office, the Executive Secretary-Director of the State Board of Elections and the county boards of elections in the implementation of this Article.

"§ *163-132.5A:* Repealed by Session Laws 1991 (Regular Session, 1992), c. 927, s. 1.

"§ *163-132.5B. Exemption from Administrative Procedure Act.*

The State Board of Elections is exempt from the provisions of Chapter 150B of the General Statutes while acting under the authority of this Article. Appeals from a final decision of the Executive Secretary-Director of the State

Board of Elections under this Article shall be taken to the State Board of Elections within 30 days of that decision. The State Board shall approve, disapprove or modify the Executive Secretary's decision within 30 days of receipt of notice of appeal. Failure of the State Board to act within 30 days of receipt of notice of appeal shall constitute a final decision approving that of the Executive Secretary. Appeals from a final decision of the State Board under this Article shall be taken to the Superior Court of Wake County.

"§ *163-132.5C. Local acts and township lines.*

(a) Notwithstanding the provisions of any local act, a county board of elections need not have the approval of any other county board or commission to make precinct boundary changes required by this Article.

(b) ~~Notwithstanding G.S. 163-128, precinct~~ Precinct boundaries established, retained or changed under this Article, or changed to follow a district line where a precinct has been divided in a districting plan, may cross township lines.

"§ *163-132.5D. Retention of precinct maps.*

The Executive Secretary-Director of the State Board of Elections shall retain the maps and written descriptions which he approves pursuant to G.S. 163-132.3.

"§ *163-132.5E. Precinct maps and voter statistics filed with the Legislative Services Office.*

(a) No later than January 31 of each year, the chairman of each county board of elections shall file with the Legislative Services Office a map showing the county's precincts as of January 1 of that year.

(b) Not later than January 31 of each year, the chair of each county board of elections shall file with the Legislative Services Office a list of each precinct in the county as of January 1 of that year and the number of registered voters, in each precinct, by political party and race; and, no later than January 31 of each year beginning in 1996, with a numerical breakdown as to the race of registered voters of each political party.

(c) The Legislative Services Office shall develop and send by mail to each county board of elections by September 15 of each year a standard electronic data format that can be used in the following year by county boards of election as an alternative method of filing the list required by subsection (b) of this section. The standard electronic data format shall be for data provided in international standard ASCII file format on 9-track magnetic tape, 8-millimeter magnetic tape, 5 1/4 inch diskettes, or 3 1/2 inch diskettes. The standard electronic data format shall contain the name of the precinct, and for each precinct the total number of registered voters, the number of registered voters by party affiliation, the number of registered voters by race, and a numerical breakdown as to the race of registered voters in each political party.

"§ *163-132.5F. U.S. Census data by precinct.*

The State shall request the U.S. Census Bureau for each decennial census to provide summaries of census data by precinct and shall participate in any U.S. Bureau of the Census' program to effectuate this provision.

"§ *163-132.6:* Repealed by Session Laws 1991 (Regular Session, 1992), c. 927, s. 1."

Sec. 3. G.S. 163-132.3, effective on January 2, 2000, reads as rewritten:

"*§ 163-132.3. Alterations to approved precinct boundaries.*

(a) No county board of elections ~~of a county listed in G.S. 163-132.1A(b), after January 1, 1990, and no county board of elections of a county listed in G.S. 163-132.2(h), after its precinct boundaries are approved pursuant to G.S. 163-132.2,~~ may change any precinct boundary unless the proposed new precinct consists solely of contiguous territory and its new boundaries are coterminous with those of:

(1) Townships, as certified by the county manager, or the chairman of the board of county commissioners if there is not a county manager, on the official map of the county;

(2) The census blocks established under the latest U.S. Census or the boundaries contained on the latest preliminary U.S. Census Maps, issued under P.L. 94-171, whichever occurs later;

(3) The following visible physical features, readily distinguishable upon the ground:

a. Roads or streets;

b. Water features or drainage features;

~~c. Ridgelines;~~

~~d. Ravines;~~

~~e. Jeep trails;~~

f. Rail features; or

g. Above-ground power ~~lines; or~~ lines

~~h. Major footpaths~~

as certified by the North Carolina Department of Transportation on its highway maps or the county manager of the relevant county or, if there is no county manager, the chair of the county board of commissioners, on official county maps.

(4) Municipalities, as certified by the city clerk on the official map of the city; or

(5) A combination of these boundaries.

The county boards of elections shall report precinct boundary changes by filing with the Legislative Services Office on current official census maps or maps certified by the North Carolina Department of Transportation or the county's planning department or on other maps or electronic databases approved by the Executive Secretary-Director, the new boundaries of these precincts. The Executive Secretary-Director may require a county board of elections to file a written description of the boundaries of any precinct or part thereof. No newly created or altered precinct boundary is effective until approved by the Executive Secretary-Director of the State Board as being in compliance with this subsection.

(b) The Executive Secretary-Director of the State Board of Elections and the Legislative Services Office shall examine the maps of the proposed new or altered precincts and any required written descriptions. After its examination of the maps and their written descriptions, the Legislative Services Office shall submit to the Executive Secretary-Director of the State Board of Elections its opinion as to whether all of the proposed precinct boundaries are in compliance with subsection (a) of this section, with

notations as to where those boundaries do not comply with these standards. If the Executive Secretary-Director of the State Board determines that all precinct boundaries are in compliance with this section, the Executive Secretary-Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.

(c) If the Executive Secretary-Director of the State Board determines that the proposed precinct boundaries are not in compliance with subsection (a) of this section, he shall not approve those precinct boundaries. He shall notify the county board of elections of his disapproval specifying the reasons. The county board of elections may then resubmit new precinct maps and written descriptions to cure the reasons for their disapproval."

Sec. 4. G.S. 153A-19 reads as rewritten:

"§ *153A-19. Establishing and naming townships.*

(a) A county may by resolution establish and abolish townships, change their boundaries, and prescribe their names, except that no such resolution may become effective during the period beginning January 1, ~~1988,~~ 1998, and ending January 2, ~~1990,~~ 2000, and any resolution providing that the boundaries of a township shall change automatically with changes in the boundaries of a city shall not be effective during that period. The current boundaries of each township within a county shall at all times be drawn on a map, or set out in a written description, or shown by a combination of these techniques. This current delineation shall be available for public inspection in the office of the clerk.

(b) Any provision of a city charter or other local act which provides that the boundaries of a township shall change automatically upon a change in a city boundary shall not be effective during the period beginning January 1, ~~1988,~~ 1998, and ending January 2, ~~1990.~~ 2000.

(c) The county manager or, where there is no county manager, the chairman of the board of commissioners, shall report township boundaries and changes in those boundaries to the United States Bureau of the Census in the Boundary and Annexations Survey. In responding to the surveys, each county manager or, if there is no manager, chairman of the board of commissioners shall consult with the county board of elections and other appropriate local agencies as to the location of township boundaries, so that the Census Bureau's mapping of township boundaries does not disagree with any county voting precinct boundaries that may be based on township boundaries."

Sec. 5. Except as specifically otherwise provided in this act, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1995.

S.B. 836 **CHAPTER 424**

AN ACT TO ENHANCE PARENTAL SUPPORT OF CHILDREN BY AMENDING THE LAW PERTAINING TO CIVIL ACTIONS TO ESTABLISH PATERNITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 49-14(c) reads as rewritten:

"(c) No such action shall be commenced nor judgment entered after the death of the putative ~~father.~~ father, unless the action is commenced either:

(1) Prior to the death of the putative father;

(2) Within one year after the date of death of the putative father, if a proceeding for administration of the estate of the putative father has not been commenced within one year of his death; or

(3) Within the period specified in G.S. 28A-19-3(a) for presentation of claims against an estate, if a proceeding for administration of the estate of the putative father has been commenced within one year of his death.

Any judgment under this subsection establishing a decedent to be the father of a child shall be entered nunc pro tunc to the day preceding the date of death of the father."

Sec. 2. G.S. 49-14(d) reads as rewritten:

"(d) If the action to establish paternity is brought more than three years after birth of a ~~child,~~ child or is brought after the death of the putative father, paternity shall not be established in a contested case without evidence from a blood or genetic marker test."

Sec. 3. This act becomes effective October 1, 1995, and applies to actions commenced on or after that date, but before October 1, 1998, without regard to the date of death of the putative father. This act expires on October 1, 1998.

In the General Assembly read three times and ratified this the 12th day of July, 1995.

S.B. 955 **CHAPTER 425**

AN ACT PROHIBITING THE UNAUTHORIZED USE OF WIRELESS TELECOMMUNICATIONS SERVICES AND ESTABLISHING CIVIL AND CRIMINAL PENALTIES FOR ACTS RELATING TO SUCH USE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-113.5 reads as rewritten:

"*§ 14-113.5. Making, ~~possessing or transferring~~ distributing, possessing, transferring, or programming device for theft of telecommunication service; publication of information regarding schemes, devices, means, or methods for such theft; concealment of existence, origin or destination of any telecommunication.*

(a) It shall be unlawful for any person knowingly to:

(1) ~~Make or possess any instrument, apparatus, equipment, or~~ Make, distribute, possess, use, or assemble an unlawful telecommunications device or modify, alter, program, or reprogram a telecommunication device designed, adapted, or which is ~~used~~ used:

a. For commission of a theft of telecommunication service or to acquire or facilitate the acquisition of telecommunications

service without the consent of the telecommunication service provider in violation of this Article, or

b. To conceal, or assist another to conceal, from any supplier of a telecommunication service provider or from any lawful authority the existence or place of origin or of destination of any telecommunication, or

(2) Sell, possess, distribute, give, transport, or otherwise transfer to another or offer or advertise for ~~sale, any instrument, apparatus, equipment, or device described in (1) above,~~ sale any:

a. Unlawful telecommunication device, or plans or instructions for making or assembling the same under circumstances evincing an intent to use or employ ~~such apparatus, equipment, or~~ the unlawful telecommunication device, or to allow the same to be used or employed, for a purpose described in (1)a or (1)b above, or knowing or having reason to believe that the same is intended to be so used, or that the aforesaid plans or instructions are intended to be used for making or assembling ~~such apparatus, equipment or device,~~ the unlawful telecommunication device; or

b. Material, including hardware, cables, tools, data, computer software or other information or equipment, knowing that the purchaser or a third person intends to use the material in the manufacture of an unlawful telecommunication device; or

(3) Publish plans or instructions for making or assembling or using any ~~apparatus, equipment or device described in (1) above,~~ unlawful telecommunication device, or

(4) Publish the number or code of an existing, cancelled, revoked or nonexistent telephone number, credit number or other credit device, or method of numbering or coding which is employed in the issuance of telephone numbers, credit numbers or other credit devices with knowledge or reason to believe that it may be used to avoid the payment of any lawful telephone or telegraph toll charge under circumstances evincing an intent to have ~~such~~ the telephone number, credit number, credit device or method of numbering or coding so used. ~~As used in this section, 'publish' means the communication or dissemination of information to any one or more persons, either orally, in person or by telephone, radio or television, or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article, or book.~~

~~(5) Any instrument, apparatus, device, plans or instructions or publications described in this section may be seized under warrant or incident to a lawful arrest for a violation of this section, and, upon the conviction of a person for a violation of this section, such instrument, apparatus, device, plans, instructions or publication may be destroyed as contraband by the sheriff of the county in which such person was convicted or turned over to the person providing telephone or telegraph service in the territory in which the same was seized.~~

(b) Any unlawful telecommunication device, plans, instructions, or publications described in this section may be seized under warrant or incident to a lawful arrest for a violation of this section. Upon the conviction of a person for a violation of this section, the court may order the sheriff of the county in which the person was convicted to destroy as contraband or to otherwise lawfully dispose of the unlawful telecommunication device, plans, instructions, or publication.

(c) The following definitions apply in this section and in G.S. 14-113.6:

(1) Manufacture of an unlawful telecommunication device. -- The production or assembly of an unlawful telecommunication device or the modification, alteration, programming or reprogramming of a telecommunication device to be capable of acquiring or facilitating the acquisition of telecommunication service without the consent of the telecommunication service provider.

(2) Publish. -- The communication or dissemination of information to any one or more persons, either orally, in person or by telephone, radio or television, or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article, or book.

(3) Telecommunication device. -- Any type of instrument, device, machine or equipment that is capable of transmitting or receiving telephonic, electronic or radio communications, or any part of such instrument, device, machine or equipment, or any computer circuit, computer chip, electronic mechanism or other component that is capable of facilitating the transmission or reception of telephonic, electronic or radio communications.

(4) Telecommunication service. -- Any service provided for a charge or compensation to facilitate the origination, transmission, emission or reception of signs, signals, data, writings, images, sounds or intelligence of any nature of telephone, including cellular or other wireless telephones, wire, radio, electromagnetic, photoelectronic or photo-optical system.

(5) Telecommunication service provider. -- A person or entity providing telecommunication service, including, a cellular, paging or other wireless communications company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office or other equipment or telecommunication service.

(6) Unlawful telecommunication device. -- Any telecommunication device that is capable, or has been altered, modified, programmed or reprogrammed alone or in conjunction with another access device or other equipment so as to be capable, of acquiring or facilitating the acquisition of any electronic serial number, mobile identification number, personal identification number or any telecommunication service without the consent of the telecommunication service provider. The term includes, telecommunications devices altered to obtain service without the consent of the telecommunication service provider, tumbler phones, counterfeit or clone microchips, scanning receivers of

wireless telecommunication service of a telecommunication service provider and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider. This section shall not apply to any device operated by a law enforcement agency in the normal course of its activities."

Sec. 2. G.S. 14-113.6 reads as rewritten:

"§ *14-113.6.* ~~*Violation made misdemeanor.*~~ *Penalties for violation; civil action.*

(a) Any person violating any of the provisions of this Article shall be guilty of a Class 2 misdemeanor. However, if the offense is a violation of G.S. 14-113.5 and involves five or more unlawful telecommunication devices the person shall be guilty of a Class G felony.

(b) The court may, in addition to any other sentence authorized by law, order a person convicted of violating G.S. 14-113.5 to make restitution for the offense.

(c) Any person or entity aggrieved by a violation of G.S. 14-113.5 may, in a civil action in any court of competent jurisdiction, obtain appropriate relief, including preliminary and other equitable or declaratory relief, compensatory and punitive damages, reasonable investigation expenses, costs of suit and any attorney fees as may be provided by law."

Sec. 3. This act becomes effective December 1, 1995, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 12th day of July, 1995.

H.B. 576 **CHAPTER 426**

AN ACT TO INCORPORATE THE TOWN OF SUMMERFIELD, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Summerfield is enacted to read:

"CHARTER OF THE TOWN OF SUMMERFIELD.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. *Incorporation and Corporate Powers.* The inhabitants of the Town of Summerfield are a body corporate and politic under the name 'Town of Summerfield'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"Sec. 1.2. *Map.* An official map of the Town, showing the current boundaries, is maintained permanently in the office of the Town Clerk and is available for public inspection. A true copy of such shall be filed in the office of the Guilford County Register of Deeds.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. *Town Boundaries.* Until modified in accordance with law the boundaries of the Town of Summerfield are as follows:

BEGINNING at the intersection of the middle of United States Highway 220 and the southern bank of the Haw River: Thence in a generally western direction following the middle of the Haw River To the Bruce Township Line.

Thence south along the Bruce Township Line to the intersection with the corner of Guilford County Tax Map ACL-10-654, Block 1038, Lot 4.

Thence in a generally eastern direction along the northern boundary of Lot 4.

Thence in a generally southern direction along the eastern line of Lots 4 and 54, and Guilford County Tax Map ACL-10-654, Block 1037, Lots 14 and 15 to the intersection of the northern boundary of Lot 2.

Thence in a generally eastern direction along the northern boundary of Lot 2, and Guilford county Tax Map ACL-10-654, Block 984, Lot 6 and Lot 4 until reaching a point in the middle of Belford Road.

Thence in a generally northern direction along the center line of Belford Road to the intersection of the southern corner of Guilford County Tax Map ACL-10-654, Block 983, Lot 33.

Thence in generally northern direction following the southern and eastern boundaries of Lot 33 to the southern most line of Lot 18.

Thence in a generally eastern direction along the southern boundaries of Guilford County Tax Map ACL-10-654, Block 983, Lots 18, 17, and 4.

Thence in a generally southern direction along the western boundary of Guilford County Tax Map ACL-10-654, Block 983, Lot 2.

Thence in a generally eastern direction along the southern boundaries of Guilford County Tax Map 10-654, Block 983, Lots 2, 31, 21, and 36.

Thence generally north along the eastern boundary of Lot 36 until reaching a point on the southern edge of Highway 150.

Thence east following the southern edge of Highway 150 to the intersection of Guilford County Tax Map 10-654 Block 972, Lot 1.

Thence generally south then east and then north following the boundaries of Lot 1.

Thence east following Highway 150 to the western boundary of Guilford County Tax Map 10-654, Block 972, Lot 15.

Thence south along the western boundaries of Lots 15 and 21.

Thence east along the southern boundary of Lot 21.

Thence south along the western boundary of Lot 18.

Thence generally east following the southern boundary of Lots 18, 17, and 20.

Thence generally north along the eastern boundary of Lots 20 and 11 until the intersection with the southern boundary of Lot 3.

Thence generally north east along the southern boundary of Lot 3 and generally east along the southern boundary of Lot 13 until reaching a point in the center of Brookbank Road.

Thence generally north following the center of Brookbank Road until a point on the southern edge of Highway 150,

Thence generally east along the southern edge of Highway 150 to the intersection of the western corner of Guilford County Tax Map ACL-1-37, Block 917, Lot 66.
Thence generally southeast, then northeast and then northwest along the boundaries of Lot 66 to a point on the southern side of Highway 150.
Thence generally east along the southern edge of Highway 150 to the western corner of Guilford County Tax Map ACL-1-37, Block 917, Lot 35.
Thence generally south along the western boundary of Lot 35.
Thence generally east along the southern boundary of Lots 35, 16, and 14 to the western boundary of Lot 32.
Thence south along the western boundary of Lot 32.
Thence generally east along the southern boundaries of Lots 32, 33, and 6 to a point on the eastern edge of Trinity Church Road at the western intersection of Lots 55 and 15.
Thence generally south along the western boundary of Lot 15; thence east on the southern boundary of Lot 15, thence south on the western boundary of Lots 34 & 59.
Thence generally east along the southern boundary of Lot 59.
Thence generally south along the eastern boundary of Lot 13 until reaching the northern most edge of Centerfield Road.
Thence generally east until the intersection of State Road 2120.
Thence generally southwest along State Road 2120 to the intersection of Greenlawn Drive.
Thence along Greenlawn Drive to the intersection of the G.S. Miles Subdivision line.
Thence west on northern boundary of G.S. Miles and south along the western boundary following the western boundary of the G.S. Miles Subdivision until reaching the northern boundary of Guilford County Tax Map ACL-1-35, Block 905, Lot 10.
Thence west following the northern boundary of Lot 10 and then generally south following the western boundaries of Lots 10, 9, 82, 41, 11, and 46.
Thence east along the southern boundary of Lot 46 to the western edge of Pleasant Ridge Road.
Thence south following the western edge of Pleasant Ridge Road until reaching the northern boundary of Lot 44.
Thence generally west along the northern boundary of Lot 44.
Thence south along the western boundaries of Lots 44 and 63.
Thence east along the southern boundary of Lot 63 until reaching the eastern edge of Pleasant Ridge Road.
Thence south along the eastern edge of Pleasant Ridge Road until reaching the southern boundary of the A. J. Norman Subdivision.
Thence east along the southern boundary of the A. J. Norman subdivision and Guilford County Tax Map ACL-1-35, Block 905, Lot 47 to the western boundary of Guilford Tax Map ACL-1-35, Block 905, Lot 21.
Thence south, then east and then north along the boundaries of Lot 21.
Thence east along the southern boundary of Lots 19, 51, 2, and 52 to the center of Summerfield Road.
Thence south along the center line of Summerfield road to the intersection of United States Highway 220.

Thence generally north along the center line of Highway 220 to the southern boundary of Guilford County Tax Map ACL-1-35, Block 852, Lot 21; thence generally east along the southern boundary of Lot 21; thence north along the eastern boundary to the intersection of North Carolina Highway 150.

Thence east along the center line of Highway 150 to the intersection of Stradder road. Thence north along the center line of Stradder road to the intersection of Scalesville road. Thence generally west to the intersection with Highway 220. Thence generally north along Highway 220 to the intersection of the Haw River and the point of beginning.

"Sec. 2.2. *Annexation.* The Town may not annex under Part 2 of Article 4A of Chapter 160A of the General Statutes without a petition signed by the owners of a majority of the property being annexed. This requirement is in addition to any other requirement of Part 2, and the form for the petition shall be the same as that in G.S. 160A-31 except for the modification to be by the owners of a majority of the property. The Town may also submit any annexation under Part 2 to the qualified voters of the area proposed for annexation for approval. The election shall be called and conducted in accordance with G.S. 163-287 and G.S. 163-288.2.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. *Structure of Governing Body; Number of Members.* The governing body of the Town of Summerfield is the Town Council, which has six members.

"Sec. 3.2. *Manner of Electing Council.* The qualified voters of the entire Town elect the members of the Council.

"Sec. 3.3. *Term of Office of Council Members.* Members of the Council are elected to two-year terms in 1997 and biennially thereafter.

"Sec. 3.4. *Vacancies.* Notwithstanding G.S. 160A-63, persons appointed by the Town Council to fill vacancies on the Council serve the remainder of the unexpired term.

"Sec. 3.5. *Selection of Mayor; Term of Office.* The Mayor shall be elected in 1997 by the Council from among its membership at the organizational meeting after each Town election to serve until the organizational meeting after the municipal election in 1999. The Mayor has the right to vote on all matters before the Council. In 1999 and thereafter, the member of the Town Council receiving the highest number of votes in the regular municipal election is mayor for the succeeding term of the Town Council.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. *Conduct of Town Elections.* Town elections shall be conducted on a nonpartisan basis, and the results determined by plurality as provided in G.S. 163-292. Elections shall be conducted by the Guilford County Board of Elections in accordance with general law except as modified by this Charter.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. *Mayor-Council Plan.* The Town of Summerfield shall operate under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 5.2. *Tax Limitation.* No ad valorem tax may be levied by the Town at a rate in excess of twenty cents (20¢) per one hundred dollars ($100.00) valuation without the approval of the qualified voters in accordance with the same procedures as specified in G.S. 160A-209(f)."

Sec. 2. (a) From and after the effective date of this act, the citizens and property in the Town of Summerfield shall be subject to municipal taxes levied for the year beginning July 1, 1996, and for that purpose the Town shall obtain from Guilford County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1996; and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance.

(b) The Town may adopt a budget ordinance for fiscal year 1995-96 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. No ad valorem taxes shall be levied for fiscal year 1995-96.

(c) The Town may adopt a budget ordinance for fiscal year 1996-97 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1996-97, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1996.

(d) Until the organizational meeting following the 1997 municipal election the following persons are members of the Town Council: Jim Alexander, Joan T. Beeson, Lynn Lengyel, Douglas Parrish, and Bill Peterson. They shall elect from among their membership a mayor to serve until the organizational meeting after the 1997 municipal election.

Sec. 3. At the date of the primary election for county officers in 1996 established under G.S. 163-1, the Guilford County Board of Elections shall conduct a special election for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Summerfield the question of whether or not such area shall be incorporated as the Town of Summerfield. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

Sec. 4. In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Incorporation of the Town of Summerfield".

Sec. 5. In the election, if a majority of the votes are cast "For incorporation of the Town of Summerfield", Sections 1 and 2 of this act shall become effective on the date that the Guilford County Board of Elections certifies the results of the election. Otherwise, those sections shall have no force and effect.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1995.

H.B. 761 **CHAPTER 427**

AN ACT TO PROVIDE FOR THE LICENSURE OF FOREIGN LEGAL CONSULTANTS AND TO AUTHORIZE FOREIGN LEGAL CONSULTANTS TO ENGAGE IN A LIMITED PRACTICE OF LAW IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 84A.

"Foreign Legal Consultants.

"*§ 84A-1. License to practice as a foreign legal consultant.*

(a) The North Carolina Supreme Court may issue a license to practice in the form of a certificate of registration as a foreign legal consultant to any applicant who satisfies all of the following requirements:

(1) Has been admitted to practice as an attorney, or the equivalent thereof, in a foreign country for at least five years as of the date of application for a certificate of registration;

(2) Possesses the character, ethical, and moral qualifications required of a member of the North Carolina State Bar;

(3) Intends to practice in the State as a foreign legal consultant and intends to maintain an office in the State for this practice;

(4) Is at least 21 years of age;

(5) Has been actively and substantially engaged in the practice of law or a profession or occupation that requires admission to the practice of law, or the equivalent thereof, in the foreign country in which the applicant holds a license for at least five of the seven years immediately preceding the date of application for a certificate of registration and is in good standing as an attorney, or the equivalent thereof, in that country; and

(6) Obtains a certificate of registration as a foreign legal consultant pursuant to G.S. 84A-3.

(b) An applicant is not required to take an examination to be licensed under this Chapter.

(c) As used in this section, 'foreign country' means any country other than the United States of America. 'Foreign country' includes Puerto Rico, Guam, the Virgin Islands, and the possessions of the United States.

"*§ 84A-2. Application for a certificate of registration.*

(a) Any person desiring to obtain a certificate of registration as a foreign legal consultant shall file an application, in duplicate, with the North Carolina State Bar on a form prescribed by the North Carolina State Bar. The application shall be made under oath, and shall contain information relating to the applicant's age, residence, address, citizenship, occupation, general education, legal education, moral character, and any other matters requested by the North Carolina State Bar.

(b) An applicant shall submit two 2-inch by 3-inch photographs of the applicant showing a front view of the applicant's head and shoulders.

(c) The applicant shall submit an application fee required by the North Carolina State Bar with the application. An application fee imposed under this subsection may not exceed two hundred dollars ($200.00). Applications that are received without fees or applications that are not substantially complete shall be promptly returned to the applicant, with a notice stating the reasons for returning the application unprocessed and stating any additional fees that the State Bar determines are required as a condition of reapplication.

(d) The application shall be accompanied by all of the following documents, and, if any documents are not in English, accompanied by duly authenticated English translations of:

(1) A certificate from the authority that has final jurisdiction regarding matters of professional discipline in the foreign country or jurisdiction in which the applicant was admitted to practice law, or the equivalent thereof. This certificate must be signed by a responsible official or one of the members of the executive body of the authority, imprinted with the official seal of the authority, if any, and must certify:
   a. The authority's jurisdiction in such matters;
   b. The applicant's admission to practice law, or the equivalent thereof, in the foreign country, the date of admission, and the applicant's standing as an attorney or the equivalent thereof; and
   c. Whether any charge or complaint ever has been filed with the authority against the applicant, and, if so, the substance of and adjudication or resolution of each charge or complaint.

(2) A letter of recommendation from one of the members of the executive body of this authority or from one of the judges of the highest law court or court of general original jurisdiction of the foreign country, certifying the applicant's professional qualifications, and a certificate from the clerk of this authority or the clerk of the highest law court or court of general original jurisdiction, attesting to the genuineness of the applicant's signature.

(3) A letter of recommendation from at least two attorneys, or the equivalent thereof, admitted in and practicing law in the foreign country, stating the length of time, when, and under what circumstances they have known the applicant and their appraisal of the applicant's moral character.

(4) Any other relevant documents or information as may be required by the North Carolina State Bar.

(e) In addition to the documents set forth in subsection (d) of this section, the North Carolina State Bar may require other evidence as to the applicant's education, professional qualification, character, fitness, and moral qualification.

(f) Records, papers, and other documents containing information collected or compiled by the North Carolina State Bar or any of its members or employees as a result of any investigation, application, inquiry or interview conducted in connection with an application for a certificate of registration

are not public records within the meaning of Chapter 132 of the General Statutes.

(g) Reciprocity between North Carolina and the foreign country in which the applicant is licensed is required for the applicant to be licensed as a foreign legal consultant under this Chapter.

"*§ 84A-3. Issuance of a certificate of registration; waiver.*

(a) The North Carolina State Bar shall review the statements and the supporting documents contained in an application submitted pursuant to G.S. 84A-2 and shall report the results of their review, with recommendations, to the North Carolina Supreme Court.

(b) The North Carolina Supreme Court may issue to an applicant a certificate of registration as a foreign legal consultant.

(c) The North Carolina Supreme Court shall not grant a certificate of registration as a foreign legal consultant unless it is satisfied that the applicant possesses good moral character.

(d) Upon a showing that strict compliance with all of the provisions of G.S. 84A-2 would cause the applicant unnecessary hardship or upon a showing of professional qualifications to practice as a foreign legal consultant satisfactory to the North Carolina Supreme Court, the North Carolina Supreme Court may issue a certificate of registration under this Chapter to an applicant who did not satisfy the provisions of G.S. 84A-2.

"*§ 84A-4. Scope of practice.*

(a) Subject to the limitations set forth in subsections (b) and (c) of this section, a person licensed as a foreign legal consultant under this Chapter may provide legal services in the State and be compensated for those legal services.

(b) A person licensed as a foreign legal consultant shall not engage in any of the following:

(1) Appear on behalf of another person or entity as the attorney for that person or entity in any legal proceeding or before any judicial officer or State or municipal agency or tribunal.

(2) Sign or file in the capacity of an attorney any pleadings, motions, or other documents in any legal proceeding or before any judicial officer or State or municipal agencies, or tribunal.

(3) Prepare any deed, deed of trust, mortgage, option, lease, assignment, agreement or contract of sale, or any other instrument that may affect title to real estate located in the United States.

(4) Prepare any will or trust instrument affecting the disposition of any property located in the United States and owned by a resident of the United States.

(5) Prepare any instrument relating to the administration of a decedent's estate in the United States.

(6) Prepare any instrument affecting the marital relationship, rights, or duties of a resident of the United States or affecting the custody or care of the children of such a resident.

(7) Render professional legal advice regarding State law, the laws of any other state, the laws of the District of Columbia, the laws of the United States or the laws of any foreign country other than

the country in which the foreign legal consultant is admitted to practice as an attorney or the equivalent thereof.

(8) In any way represent that the foreign legal consultant is licensed as an attorney in the State or in any other jurisdiction unless he or she is licensed in that jurisdiction.

(9) Use any title other than 'foreign legal consultant'; provided, however, that the foreign legal consultant's authorized title and firm name in the foreign country in which he or she is admitted to practice as an attorney or the equivalent thereof, may be used, if the title, firm name, and the name of the foreign country are stated together with the title 'foreign legal consultant'. Nothing may be added to the title to create the impression that the foreign legal consultant holds a license to practice law in North Carolina.

(10) Be hired by a firm as a partner, member, or in any capacity other than as a foreign legal consultant whose services shall be overseen by an attorney licensed to practice law in North Carolina.

(c) If a particular matter requires legal advice from a person admitted to practice law as an attorney in a jurisdiction other than the one in which the foreign legal consultant is admitted to practice law, or its equivalent thereof, then the foreign legal consultant shall consult an attorney, or the equivalent thereof, in that other jurisdiction, obtain written legal advice on the particular matter, and transmit the written legal advice to the client.

"§ 84A-5. *Duties of a foreign legal consultant.*

A foreign legal consultant shall:

(1) Be subject to rules adopted by the North Carolina Supreme Court and the North Carolina State Bar and be subject to professional discipline in the same manner as is prescribed for disciplinary proceedings against attorneys;

(2) Be subject to a proceeding brought by the North Carolina State Bar in superior court pursuant to G.S. 84-28(j) to protect the interests of clients of disabled, incapacitated, or deceased foreign legal consultants;

(3) Provide the Clerk of the North Carolina Supreme Court with evidence of professional liability insurance, in an amount as prescribed by the Supreme Court to assure the foreign legal consultant's proper professional conduct and responsibility;

(4) Subject his or her trust accounts to audit in the same manner as is prescribed for attorneys licensed to practice law in North Carolina;

(5) Execute and file with the Clerk of the North Carolina Supreme Court, in a form and manner as prescribed by the Clerk:

a. An oath attesting that the foreign legal consultant will abide by the Rules of Professional Conduct of the North Carolina State Bar and those rules and directives of the North Carolina Supreme Court that are applicable to foreign legal consultants;

b. A document setting forth the foreign legal consultant's address in the State and designating the Clerk of the North Carolina Supreme Court as agent upon whom process may be

served, with the same effect as if served personally upon the foreign legal consultant in any judicial, quasi-judicial, or administrative proceeding brought against the foreign legal consultant arising out of or based upon any legal services rendered or offered to be rendered by the foreign legal consultant within the State or to residents of the State; and

c. The foreign legal consultant's commitment to notify the Clerk of the North Carolina Supreme Court of any resignation or revocation of the foreign legal consultant's admission to practice law, or the equivalent thereof, in the foreign country in which he or she is admitted to practice as an attorney, or the equivalent thereof, and of any censure, suspension, reprimand, or expulsion with respect to that admission, or of any change of address within the State.

(6) Pay an annual administration fee to the North Carolina State Bar equal in amount to the annual membership fee charged to active members of the North Carolina State Bar. Such fee shall be due on January 1 and delinquent on July 1 for each year or portion of a year in which the foreign legal consultant holds a certificate of registration. No portion of the annual administrative fee shall be waived or prorated. The State Bar's rules and regulations regarding enforcement and collection of annual membership fees shall apply to the enforcement of the obligation to pay the administrative fee.

"*§ 84A-6. Service of process on foreign legal consultant.*

Service of process on the Clerk of the North Carolina Supreme Court, pursuant to this Article, shall be made by personally delivering to and leaving with the Clerk duplicate copies of such process together with a fee of ten dollars ($10.00). The Clerk shall promptly send one of such copies to the foreign legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to the foreign legal consultant at the address specified by the foreign legal consultant in his or her application under G.S. 84A-2, as updated pursuant to G.S. 84A-5(5).

"*§ 84A-7. Delegation of duties.*

The North Carolina State Bar may delegate any of its duties under this Chapter to the North Carolina Board of Law Examiners.

"*§ 84A-8. Adoption of Rules.*

The North Carolina State Bar is authorized to adopt and amend such rules, subject to approval of the North Carolina Supreme Court, as are appropriate to accomplish the provisions of this Chapter."

Sec. 2. This act becomes effective January 1, 1996, and applies to applications filed on or after that date.

In the General Assembly read three times and ratified this the 12th day of July, 1995.

H.B. 844 **CHAPTER 428**

AN ACT TO AMEND THE VITAL RECORDS LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-101(b) reads as rewritten:

"(b) When a birth occurs in a hospital or other medical facility, the person in charge of the facility shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file it with the local ~~registrar.~~ registrar within five days after the birth. The physician or other person in attendance shall provide the medical information required by the ~~certificate~~ certificate. ~~and shall certify the facts of birth within 10 days after the birth. If the physician or other person in attendance does not certify the facts of birth within the ten-day period, the person in charge of the facility may complete and sign the certificate.~~"

Sec. 1.1. G.S. 130A-12 reads as rewritten:

"§ *130A-12 Confidentiality of records.*

All ~~privileged patient medical records~~ records containing privileged patient medical information that are in the possession of the Department or local health departments shall be confidential and shall not be public records pursuant to G.S. 132-1."

Sec. 2. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 12th day of July, 1995.

S.B. 4 **CHAPTER 429**

AN ACT TO REPEAL THE LAW PROVIDING THAT A DEFENDANT MAY CHOOSE IMPRISONMENT RATHER THAN PROBATION OR AN ALTERNATIVE PUNISHMENT AND TO AMEND THE CONSTITUTION TO PROVIDE THAT PROBATION, RESTITUTION, COMMUNITY SERVICE, WORK PROGRAMS, AND OTHER RESTRAINTS ON LIBERTY ARE PUNISHMENTS THAT MAY BE IMPOSED ON A PERSON CONVICTED OF A CRIMINAL OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1341(c) is repealed.

Sec. 2. Section 1 of Article XI of the Constitution of North Carolina reads as rewritten:

"*Section 1. Punishments.*

The following punishments only shall be known to the laws of this State: death, imprisonment, fines, suspension of a jail or prison term with or without conditions, restitution, community service, restraints on liberty, work programs, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State."

Sec. 3. The amendment set out in Section 2 of this act shall be submitted to the qualified voters of the State at the general election in November 1996, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment to provide that probation, restitution, community service, work programs, and other restraints on liberty are punishments that may be imposed on a person convicted of a criminal offense."

Sec. 4. If a majority of the votes cast on the question are in favor of the amendment set out in Section 2 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

Sec. 5. Section 1 of this act becomes effective only if the constitutional amendment described in Section 2 is approved under Sections 3 and 4 of this act. If the constitutional amendment is approved, then Section 1 of this act becomes effective January 1, 1997, and applies to any person whose criminal offense occurred on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1995.

S.B. 135 **CHAPTER 430**

AN ACT TO PROVIDE THAT PETROLEUM OVERCHARGE FUNDS AND FUNDS FROM THE WORKER TRAINING TRUST FUND APPROPRIATED FOR THE 1993 FISCAL BIENNIUM SHALL NOT REVERT.

The General Assembly of North Carolina enacts:

Section 1. (a) To the extent that Section 1.1 of this act does not provide sufficient funds, the balance of any recurring or nonrecurring funds appropriated from the Worker Training Trust Fund to certain State agencies for the 1993-94 fiscal year and for the 1994-95 fiscal year pursuant to Section 306 of Chapter 321 of the 1993 Session Laws and pursuant to Section 28 of Chapter 769 of the 1993 Session Laws, Regular Session 1994, shall not revert and shall be used by the agencies to which the funds were appropriated for the purposes for which the funds were appropriated in Section 306 of Chapter 321 of the 1993 Session Laws and in Section 28 of Chapter 769 of the 1993 Session Laws, Regular Session 1994, respectively.

(b) To the extent that Section 1.1 of this act does not provide sufficient funds, the balances of any recurring or nonrecurring funds appropriated from the Special Reserve for Oil Overcharge Funds for the 1993-94 fiscal year and for the 1994-95 fiscal year pursuant to Sections 301 and 302 of Chapter 321 of the 1993 Session Laws shall not revert and shall be used by the agencies to which the funds were appropriated for the purposes for which the funds were appropriated in Sections 301 and 302 of Chapter 321 of the 1993 Session Laws.

Sec. 1.1. The Director of the Budget may continue to allocate funds for expenditure for current operations by State departments, institutions, and agencies funded from the Worker Training Trust Fund or from the Special Reserve for Oil Overcharge Funds at the level not to exceed the level at which those operations were authorized by the General Assembly as of June

30, 1995. The Director of the Budget shall not allocate funds for any of the purposes set out in the base budget reductions contained in Chapter 324 of the 1995 Session Laws.

To the extent necessary to implement this authorization, there is appropriated from the Worker Training Trust Fund or from the Special Reserve for Oil Overcharge Funds, as applicable, for the 1995-96 fiscal year, funds necessary to carry out this section.

This appropriation and this authorization to allocate and spend funds shall remain in effect until ratification of House Bill 230, 1995 Regular Session, at which time that act shall become effective and shall govern appropriations and expenditures. Upon ratification of House Bill 230, 1995 Regular Session, the Director of the Budget shall adjust allocations to give effect to that act from July 1, 1995.

Except as otherwise provided by this act, the limitations and directions for the 1994-95 fiscal year in Chapters 321, 561, 594, and 769 of the 1993 Session Laws that applied to appropriations to particular agencies or for particular purposes apply to the funds appropriated and authorized for expenditure under this section.

Sec. 2. This act becomes effective June 30, 1995, and Section 1 of this act expires upon ratification of House Bill 230 by the 1995 General Assembly, Regular Session 1995.

In the General Assembly read three times and ratified this the 13th day of July, 1995.

S.B. 166 **CHAPTER 431**

AN ACT TO AMEND CERTAIN PROVISIONS OF LAW THAT REGULATE ATTORNEYS-AT-LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 84-1 reads as rewritten:

"*§ 84-1. Oaths taken in open court.*

Attorneys before they shall be admitted to practice law shall, in open court before a justice or judge of the General Court of Justice, personally appear and take the oath prescribed for ~~attorneys,~~ attorneys by G.S. 11-11, and also the oaths of allegiance to the State, and to support the Constitution of the United States, prescribed for all public ~~officers,~~ officers by Article VI, Sec. 7 of the North Carolina Constitution and G.S. 11-7, and the same shall be entered on the records of the court; and, upon such qualification had, and oath taken may act as attorneys during their good behavior."

Sec. 2. G.S. 84-2 reads as rewritten:

"*§ 84-2. Persons disqualified.*

No justice, judge, full-time district attorney, full-time assistant district attorney, public defender, assistant public defender, clerk, deputy or assistant clerk of the General Court of Justice, ~~nor~~ register of deeds, deputy or assistant register of deeds, ~~nor sheriff,~~ sheriff or deputy sheriff shall engage in the private practice of law. Persons violating this provision shall be guilty of a Class 3 misdemeanor and only fined not less than two hundred dollars ($200.00)."

Sec. 3. G.S. 84-2.1 reads as rewritten:

"*§ 84-2.1. 'Practice law' defined.*

The phrase 'practice law' as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any ~~such~~ legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase 'practice law' shall not be construed to limit the foregoing general definition of ~~such~~ the term, but shall be construed to include the foregoing particular acts, as well as all other acts within ~~said~~ the general definition."

Sec. 4. G.S. 84-4 reads as rewritten:

"*§ 84-4. Persons other than members of State Bar prohibited from practicing law.*

~~It~~ Except as otherwise permitted by law, it shall be unlawful for any person or association of persons, except active members of the Bar of the State of North Carolina admitted and licensed to practice as attorneys-at-law, to appear as attorney or counselor at law in any action or proceeding ~~in any court in this State or~~ before any judicial ~~body or~~ body, including the North Carolina Industrial Commission, or the Utilities Commission; to maintain, conduct, or defend the same, except in his own behalf as a party thereto; or, by word, sign, letter, or advertisement, to hold out himself, or themselves, as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counselor-at-law, or in furnishing the services of a lawyer or lawyers; and it shall be unlawful for any person or association of persons except active members of the Bar, for or without a fee or consideration, to give legal advice or counsel, perform for or furnish to another legal services, or to prepare directly or through another for another person, firm or corporation, any will or testamentary disposition, or instrument of trust, or to organize corporations or prepare for another person, firm or corporation, any other legal document. Provided, that nothing herein shall prohibit any person from drawing a will for another in an emergency wherein the imminence of death leaves insufficient time to have the same drawn and its execution supervised by a licensed attorney-at-law. The provisions of this section shall be in addition to and not in lieu of any other provisions of ~~Chapter 84,~~ this Chapter. Provided, however, this section shall not apply to corporations authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina."

Sec. 5. G.S. 84-4.1 reads as rewritten:

"*§ 84-4.1. Limited practice of out-of-state attorneys.*

Any attorney domiciled in another state, and regularly admitted to practice in the courts of record of that state and in good standing therein, having been retained as attorney for a party to any civil or criminal legal proceeding pending in the General Court of Justice of North Carolina, ~~or~~ the North Carolina Utilities ~~Commission~~ Commission, ~~or~~ the North Carolina Industrial ~~Commission~~ Commission, ~~or~~ the Office of Administrative Hearings of North ~~Carolina~~ Carolina, or any administrative agency, may, on motion, be admitted to practice in ~~the General Court of Justice or the North Carolina Utilities Commission or the North Carolina Industrial Commission or the Office of Administrative Hearings of North Carolina~~ that forum for the sole purpose of appearing for a client in the litigation. The motion required under this section shall contain or be accompanied by:

(1) The attorney's full name, post-office ~~address~~ address, bar membership number, and status as a practicing attorney in another state.

(2) A statement, signed by the client, setting forth the client's address and declaring that the client has retained the attorney to represent the client in the proceeding.

(3) A statement that unless permitted to withdraw sooner by order of the court, the attorney will continue to represent the client in the proceeding until the final determination thereof, and that with reference to all matters incident to the proceeding, the attorney agrees to be subject to the orders and amenable to the disciplinary action and the civil jurisdiction of the General Court of Justice and the North Carolina State Bar in all respects as if the attorney were a regularly admitted and licensed member of the Bar of North Carolina in good standing.

(4) A statement that the state in which the attorney is regularly admitted to practice grants like privileges to members of the Bar of North Carolina in good standing.

(5) A statement to the effect that the attorney has associated and is personally appearing in the proceeding, with an attorney who is a resident of this State and is duly and legally admitted to practice in the General Court of Justice of North Carolina, upon whom service may be had in all matters connected with ~~such~~ the legal proceedings, or any disciplinary matter, with the same effect as if personally made on the foreign attorney within this State.

Compliance with the foregoing requirements does not deprive the court of the discretionary power to allow or reject the application."

Sec. 6. G.S. 84-4.2 reads as rewritten:

"*§ 84-4.2. Summary revocation of permission granted out-of-state attorneys to practice.*

Permission granted under ~~the preceding section~~ G.S. 84-4.1 may be summarily revoked by the General Court of Justice or any agency, including the North Carolina Utilities Commission, on its own motion and in its discretion."

Sec. 7. G.S. 84-14 is recodified as G.S. 7A-97 in Article 11 of Chapter 7A of the General Statutes.

Sec. 8. G.S. 84-16 reads as rewritten:

"§ 84-16. *Membership and privileges.*

The membership of the North Carolina State Bar shall consist of two classes, active and inactive.

The active members shall be all persons who shall have heretofore obtained, or who shall hereafter obtain, a license or certificate, which shall at the time be valid and effectual, entitling them to practice law in the State of North Carolina, who shall have paid the membership dues hereinafter specified, unless classified as an inactive member by the Council as hereinafter provided. No person other than a member of the North Carolina State Bar shall practice in any court of the State except foreign attorneys as provided by statute.

Inactive members shall be all persons found by the Council to be not engaged in the practice of law and not holding themselves out as practicing attorneys and not occupying any public or private positions in which they may be called upon to give legal advice or counsel or to examine the law or to pass ~~upon~~ upon, adjudicate, or offer an opinion concerning the legal effect of any act, document, or law.

All active members shall be required to pay annual membership fees, and shall have the right to ~~vote.~~ vote in elections held by the district bar in the judicial district in which the member resides. ~~A member shall be entitled to vote at all annual or special meetings of the North Carolina State Bar, and at all meetings of and elections held by the bar of each of the judicial districts in which he resides;~~ Provided, that if ~~he~~ a member desires to vote with the bar of some district in which ~~he~~ the member practices, other than that in which ~~he~~ the member resides, ~~he~~ the member may do so ~~upon~~ by filing with ~~the resident judge of the district in which he resides (and, after the North Carolina State Bar shall have been organized as hereinafter set forth, with the secretary-treasurer of the North Carolina State Bar),~~ his the Secretary of the North Carolina State Bar a statement in writing that ~~he~~ the member desires to vote in ~~such~~ the other district: Provided, however, that in no case shall ~~he~~ the member be entitled to vote in more than one district."

Sec. 9. G.S. 84-17 reads as rewritten:

"§ 84-17. *Government.*

The government of the North Carolina State Bar is vested in a council of the North Carolina State Bar ~~hereinafter~~ referred to in this Chapter as the ~~'council',~~ 'Council', which shall be composed of ~~50~~ 55 councilors exclusive of officers, except as hereinafter provided, to be appointed or elected as hereinafter set forth, the officers of the North Carolina State Bar, who shall be councilors during their respective terms of office, and each retiring president of the North Carolina State Bar who shall be a councilor for one year from the date of expiration of his term as ~~president, whose term of office expires at the 1973 annual meeting or after,~~ president. Notwithstanding any other provisions of the law, the North Carolina State Bar ~~shall have the power and authority to~~ may acquire, hold, rent, encumber, alienate, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. ~~The North Carolina State Bar Council is authorized and empowered in its discretion to utilize the~~

~~services of the Purchase and Contract Division of the Department of Administration for the procurement of personal property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. Notwithstanding any provisions of this Article as to the voting powers of members, the council~~ The Council shall be competent to exercise the entire powers of the North Carolina State Bar in respect of the interpretation and administration of this Article, the acquisition, lease, sale, or mortgage of property, real or personal, the seeking of amendments hereto, and all other ~~matters, except as otherwise directed or overruled, as in G.S. 84-33 provided.~~ matters. There shall be one councilor from each judicial district and additional councilors as are necessary to make the total number of councilors ~~50~~ 55. The additional councilors shall be allocated and reallocated by the North Carolina State Bar every six years ~~on the basis of the number of the~~ based on the number of active members of each judicial district bar according to the records of the North Carolina State Bar and in accordance with a formula to be adopted by the North Carolina State Bar, to insure an allocation based on lawyer population of each judicial district bar as it relates to the total number of active members of the State Bar.

A councilor whose seat has been eliminated due to a reallocation shall continue to serve on the ~~council~~ Council until expiration of the remainder of the current term. A councilor whose judicial district is altered by the General Assembly during the councilor's term shall continue to serve on the Council until the expiration of the term and shall represent the district wherein the councilor resides or with which the councilor has elected to be affiliated. If before the alteration of the judicial district of the councilor the judicial district included both the place of residence and the place of practice of the councilor, and if after the alteration of the judicial district the councilor's place of residence and place of practice are located in different districts, the councilor must, not later than 10 days from the effective date of the alteration of the district, notify the Secretary of the North Carolina State Bar of an election to affiliate with and represent either the councilor's district of residence or district of practice.

In addition to the ~~50~~ 55 councilors, there shall be three public members not licensed to practice law in this or any other state who shall be appointed by the Governor. The public members may vote and participate in all matters before the Council to the same extent as councilors elected or appointed from the various judicial districts."

Sec. 10. G.S. 84-18 reads as rewritten:

"*§ 84-18. Terms, election and appointment of councilors.*

(a) Except as set out in this section, the terms of councilors are fixed at three years commencing on the first day of January in the year following their election. A year shall be the calendar year. No councilor may serve more than three successive three-year terms but a councilor may serve an unlimited number of three successive three-year terms provided a three-year period of nonservice intervenes in each instance. Any councilor serving a partial term of 18 months or more is considered to have served a full term and shall be eligible to be elected to only two successive three-year terms in addition to the partial term. Any councilor serving a partial term of less than 18 months is eligible to be elected to three successive three-year terms

in addition to the partial term. This paragraph shall not apply to officers of the State Bar.

~~All councilors serving at the effective date of these changes shall remain in office and continue to represent their district for the remainder of their term. Those who have already served for 18 months or more shall be eligible for election to two additional three-year terms and be ineligible for election thereafter until a period of three years has expired. Those who have served less than 18 months shall be eligible for election to three consecutive three-year terms and be ineligible for election thereafter until an intervening three-year period has expired.~~

The secretary of a judicial district bar shall notify the secretary-treasurer of the State Bar in writing of any additions to or deletions from the delegation of councilors representing the district within 90 days of the effective date of the change. No new councilor shall assume a seat until official notice of the election has been given to the secretary-treasurer of the State Bar.

~~When a judicial district loses a councilor or is entitled to an additional councilor by virtue of reallocation of councilors as provided in G.S. 84-17 above, then the affected judicial districts shall certify to the State Bar Council the identity of that judicial district's authorized councilor or councilors. This certification shall be made within 90 days of the date the reallocation is made and reported to the judicial districts affected. Until this certification is received, the district shall have no representation on the State Bar Council. In the case of reallocation, the certification shall be made within 90 days.~~

Any active member of the North Carolina State Bar ~~member, other than an inactive member,~~ is eligible to serve as a councilor from the judicial district in which ~~he or she~~ the member is eligible to vote.

(b) The ~~State Bar~~ Council may promulgate rules to govern the election and appointment of councilors. The election and appointment of councilors shall be as follows:

Each judicial district bar shall elect one eligible North Carolina State Bar member for each ~~State Bar~~ Council vacancy in the district. Any vacancy occurring after the election, whether caused by resignation, ~~death~~ death, reconfiguration of the district by the General Assembly, or otherwise shall be filled by the judicial district bar in which the vacancy occurs. The appointment shall be for the unexpired portion of the term and shall be certified to the ~~State Bar~~ Council by the judicial district bar. Any appointed councilor shall be subject to the terms set forth in subsection (a) of G.S. 84-18.

(c) Public members shall serve three-year terms. No public member shall serve more than two complete consecutive terms. The Secretary of the North Carolina State Bar shall promptly inform the Governor when any seat occupied by a public member becomes vacant. The successor shall serve the remainder of the term. Any public member serving a partial term of 18 months or more is considered to have served a full term and is eligible to be elected to only one additional three-year term in addition to the partial term. Any public member serving a partial term of less than 18 months is eligible

to be elected to two successive three-year terms in addition to the partial term."

Sec. 11. G.S. 84-18.1 reads as rewritten:

"§ *84-18.1. Membership and fees of district bars.*

(a) The district bar shall be a subdivision of the North Carolina State Bar subject to the general supervisory authority of the Council and may adopt rules, regulations and bylaws that are not inconsistent with this Article. A copy of any rules, regulations and bylaws that are adopted, along with any subsequent amendments, shall be transmitted to the Secretary-Treasurer of the North Carolina State Bar.

(b) Any district bar may from time to time by a majority vote of ~~its membership~~ the members present at a duly called meeting prescribe an annual membership fee to be paid by its active members as a service charge to promote and maintain its administration, activities and programs. ~~Such~~ The fee shall be in addition to, but shall not exceed, the amount of the membership fee prescribed by G.S. 84-34 for active members of the North Carolina State Bar. The district bar shall mail a written notice to every active member of the district bar at least 30 days before any meeting at which an election is held to impose or increase mandatory district bar dues. Every active member of a district bar which has prescribed an annual membership fee shall keep its secretary-treasurer notified of his correct mailing address and shall pay the prescribed fee at the time and place set forth in the demand for payment mailed to him by its secretary-treasurer. The name of each active member of a district bar who ~~shall be~~ is more than 12 full calendar months in arrears in the payment of any ~~such~~ fee shall be furnished by the secretary-treasurer of the district bar to the ~~council of the North Carolina State Bar.~~ Council. In the exercise of its powers as set forth in G.S. 84-23, the ~~council~~ Council shall thereupon take ~~such~~ disciplinary or other action with reference to the delinquent as it considers necessary and proper."

Sec. 12. G.S. 84-19 reads as rewritten:

"§ *84-19. Judicial districts definition.*

For purposes of this Article, the term 'judicial district' ~~means a judicial district as in existence on January 1, 1987,~~ refers to prosecutorial districts established by the General Assembly and the term 'district bar' means the bar of a judicial district as defined by this section."

Sec. 13. G.S. 84-20 reads as rewritten:

"§ *84-20. Compensation of councilors.*

The members of the ~~council~~ Council and members of committees when actually engaged in the performance of their duties, including committees sitting upon disbarment proceedings, shall receive as compensation ~~not exceeding ten dollars ($10.00) per day~~ for the time spent in attending ~~meetings,~~ meetings an amount to be determined by the Council, subject to approval of the North Carolina Supreme Court, and shall receive actual expenses of travel and subsistence while engaged in ~~his~~ their duties provided that for transportation by use of private automobile the expense of travel shall not exceed ~~ten cents (10¢) per mile,~~ the rate per mile allowed by G.S. 138-6. The ~~council~~ Council shall determine ~~per diem, subsistence~~ per diem and mileage to be paid. ~~Such~~ The allowance ~~as may be~~ fixed by the ~~council~~

Council shall be paid by the secretary-treasurer of the North Carolina State Bar upon ~~certified statements presented~~ presentation of appropriate documentation by each member."

Sec. 14. G.S. 84-21 reads as rewritten:

"*§ 84-21. Organization of ~~council;~~ Council; publication of rules, regulations and bylaws.*

~~Upon receiving notification of the election of a councilor for each judicial district, or, if such notification shall not have been received from all said districts, within 120 days after this Article shall have gone into effect, the clerk of the Supreme Court of North Carolina shall call a meeting of the councilors of whose election he shall have been notified, to be held in the City of Raleigh not less than 20 days nor more than 30 days after the date of said call; and at the meeting so held the councilors attending the same shall proceed to organize the council by electing officers, taking appropriate steps toward the adoption of rules and regulations, electing councilors for judicial districts which have failed to elect them, and taking such other action as they may deem to be in furtherance of this Article. The regular term of all officers shall be one year, but those first elected shall serve until January 1, 1935. The council shall be the judge of the election and qualifications of its own members. When the council shall have been fully organized and shall have adopted such rules, regulations and bylaws, not inconsistent with this Article, as it shall deem necessary or expedient for the discharge of its duties, the secretary-treasurer shall file with the clerk of the Supreme Court of North Carolina a certificate, to be called the "certificate of organization," showing the officers and members of the council, with the judicial districts which the members respectively represent, and their post-office addresses, and the rules, regulations and bylaws adopted by it; and thereupon the Chief Justice of the Supreme Court of North Carolina, or any judge thereof, if the court be then in vacation, shall examine the said certificate and, if of opinion that the requirements of this Article have been complied with, shall cause the said certificate to be spread upon the minutes of the court; but if of opinion that the requirements of this Article have not been complied with, shall return the said certificate to the secretary-treasurer with a statement showing in what respects the provisions of this Article have not been complied with; and the said certificate shall not be again presented to the Chief Justice of the Supreme Court or any judge thereof, until any such defects in the organization of the council shall have been corrected, at which time a new certificate of organization shall be presented and the same course taken as hereinabove provided, and so on until a correct certificate showing the proper organization of the council shall have been presented, and the organization of the council accordingly completed. Upon (a) the entry of an order upon the minutes of the court that the requirements of this Article have been complied with, or (b) if for any reason the Chief Justice or judge should not act thereon within 30 days, then, after the lapse of 30 days from the presentation to the Chief Justice or judge, as the case may be, of any certificate of organization hereinbefore required to be presented by the secretary-treasurer, without either the entry of an order or the return of said certificate with a statement showing the respects in which this Article has not been complied with, the organization of the council shall be deemed to be

~~complete, and it shall be vested with the powers herein set forth; and the certificate of organization shall thereupon forthwith be spread upon the minutes of the court. A copy of the certificate of organization, as spread upon the minutes of the court, shall be published in the next ensuing volume of the North Carolina Reports and in the North Carolina Administrative Code.~~ The rules and regulations ~~set forth in the certificate of organization, and all other rules and regulations which may be~~ adopted by the ~~council~~ Council under this ~~Article,~~ Article may be amended by the ~~council~~ Council from time to time in any manner not inconsistent with this Article. Copies of all ~~such~~ rules and regulations ~~adopted subsequently to the filing of the certificate of organization,~~ and of all amendments ~~so made~~ adopted by the ~~council,~~ Council shall be certified to the Chief Justice of the Supreme Court of North Carolina, entered by ~~it~~ the North Carolina Supreme Court upon its minutes, and published in the next ensuing number of the North Carolina Reports and in the North Carolina Administrative Code: Provided, that the court may decline to have so entered upon its minutes any ~~of such~~ rules, regulations and amendments which in the opinion of the Chief Justice are inconsistent with this Article."

Sec. 15. G.S. 84-22 reads as rewritten:

"*§ 84-22. Officers and committees of the North Carolina State Bar.*

The officers of the North Carolina State Bar and the Council shall consist of a president, president-elect, vice-president and an immediate past president, who shall be deemed members of the Council in all respects. The president, president-elect and vice-president need not be members of the ~~State Bar~~ Council at the time of their election. There shall be a secretary-treasurer who shall also have the title of executive director, but who shall not be a member of the ~~State Bar~~ Council. All officers shall be elected annually by the ~~State Bar~~ Council at an election to take place at the annual meeting of the North Carolina State Bar. The regular term of all officers is one year. The Council is the judge of the election and qualifications of its members.

In addition to the committees and commissions as may be specifically established or authorized by law, the North Carolina State Bar may have committees, standing or special, as from time to time the Council ~~of the North Carolina State Bar~~ deems appropriate for the proper discharge of the duties and functions of the North Carolina State Bar. The Council ~~of the North Carolina State Bar~~ shall determine the number of members, composition, method of appointment or election, functions, powers and duties, structure, authority to act, and other matters relating to each committee. Any committee may, at the discretion of the appointing or electing authority, be composed of Council members or members of the North Carolina State Bar who are not members of the Council, or of lay persons, or of any combination."

Sec. 16. G.S. 84-23 reads as rewritten:

"*§ 84-23. Powers of Council.*

Subject to the superior authority of the General Assembly to legislate thereon by general law, and except as herein otherwise limited, the Council is hereby vested, as an agency of the State, with the ~~control of the discipline, disbarment and restoration of attorneys practicing law in this State,~~ authority

to regulate the professional conduct of licensed attorneys. Among other powers, ~~The Council~~ the Council shall ~~have power to~~ administer this Article; take actions that are necessary to ensure the competence of lawyers; ~~to~~ formulate and adopt rules of professional ethics and conduct; ~~to formulate and adopt rules and procedures for discipline, incapacity and disability hearings;~~ investigate and prosecute matters of professional misconduct; grant or deny petitions for reinstatement; resolve questions pertaining to membership status; arbitrate disputes concerning legal fees; certify legal specialists; determine whether a member is disabled; and formulate and adopt procedures for accomplishing these purposes. The Council may ~~to~~ publish an official journal concerning matters of interest to the legal ~~profession;~~ profession and may ~~to~~ acquire, hold, rent, encumber, alienate, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. The ~~North Carolina State Bar~~ Council is authorized and empowered in its discretion to utilize the services of the Purchase and Contract Division of the Department of Administration for the procurement of personal property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes; and to do all ~~such~~ things necessary in the furtherance of the purposes of this Article as are not prohibited by law."

Sec. 17. G.S. 84-24 reads as rewritten:

"§ *84-24. Admission to practice.*

~~The provisions of the law now obtaining with reference to admission to the practice of law, as amended, and the rules and regulations prescribed by the Supreme Court of North Carolina with reference thereto, shall continue in force until superseded, changed or modified by or under the provisions of this Article.~~

For the purpose of examining applicants and providing rules and regulations for admission to the Bar including the issuance of license therefor, there is hereby created the Board of Law Examiners, which shall consist of 11 members of the Bar, elected by the ~~council of the North Carolina State Bar,~~ Council, who need not be members of the ~~council.~~ Council. No teacher in any law school, however, shall be eligible. The members of the Board of Law Examiners elected from the Bar shall each hold office for a term of three ~~years: Provided, that the members first elected shall hold office, two for one year, two for two years, and two for three years.~~ years.

The Board of Law Examiners shall elect a member of ~~said~~ the Board as ~~chairman~~ chair thereof, and the Board may employ an executive secretary and provide such assistance as may be required to enable ~~said~~ the Board to perform its duties promptly and properly. The ~~chairman~~ chair and any employees shall serve for ~~such period as said Board may determine,~~ a period of time determined by the Board.

The examination shall be held in ~~such~~ the manner and at ~~such~~ the times as the Board of Law Examiners may determine.

The Board of Law Examiners shall have full power and authority to make or cause to be made such examinations and investigations as may be deemed

by it necessary to satisfy it that the applicants for admission to the Bar possess the qualifications of character and general fitness requisite for an attorney and counselor-at-law and to this end the Board of Law Examiners shall have the power of subpoena and to summons and examine witnesses under oath and to compel their attendance and the production of books, papers and other documents and writings deemed by it to be necessary or material to the inquiry and shall also have authority to employ and provide ~~such~~ assistance as may be required to enable it to perform its duties promptly and properly. Records, papers, and other documents containing information collected and compiled by the Board or its members or employees as a result of investigations, inquiries, or interviews conducted in connection with examinations or licensing matters, are not public records within the meaning of Chapter 132 of the General Statutes.

All applicants for admission to the Bar shall be fingerprinted to determine whether the applicant has a record of criminal conviction in this State or in any other state or jurisdiction. The information obtained as a result of the fingerprinting of an applicant shall be limited to the official use of the Board of Law Examiners in determining the character and general fitness of the applicant.

The Board of Law Examiners, subject to the approval of the ~~council~~ Council shall by majority vote, from time to time, make, alter and amend such rules and regulations for admission to the Bar as in their judgment shall promote the welfare of the State and the profession: Provided, that any change in the educational requirements for admission to the Bar shall not become effective within two years from the date of the adoption of ~~such~~ the change.

All ~~such~~ rules and regulations, and modifications, alterations and amendments thereof, shall be recorded and promulgated as provided in G.S. 84-21 in relation to the certificate of organization and the rules and regulations of the ~~council.~~ Council.

Whenever the ~~council~~ Council shall order the restoration of license to any person as authorized by G.S. 84-32, it shall be the duty of the Board of Law Examiners to issue a written license to ~~such~~ the person, noting thereon that the ~~same~~ license is issued in compliance with an order of the ~~council of the North Carolina State Bar,~~ Council, whether the license to practice law was issued by the Board of Law Examiners or the Supreme Court in the first instance.

Appeals from the Board shall be had in accordance with rules or procedures as may be approved by the Supreme Court as may be submitted under G.S. 84-21 or as may be promulgated by the Supreme Court."

Sec. 18. G.S. 84-28 reads as rewritten:

"§ *84-28. Discipline and disbarment.*

(a) Any attorney admitted to practice law in this State is subject to the disciplinary jurisdiction of the ~~council of the North Carolina State Bar~~ Council under such rules and procedures as the ~~council~~ Council shall ~~promulgate~~ adopt as provided in ~~G.S. 84-21.~~ G.S. 84-23.

(b) The following acts or omissions by a member of the North Carolina State Bar or any attorney admitted for limited practice under G.S. 84-4.1, individually or in concert with any other person or persons, shall constitute

misconduct and shall be grounds for discipline whether the act or omission occurred in the course of an attorney-client relationship or otherwise:

(1) Conviction of, or a tender and acceptance of a plea of guilty or no contest to, a criminal offense showing professional unfitness;

(2) The violation of the Rules of Professional Conduct adopted and promulgated by the ~~council of the North Carolina State Bar~~ Council in effect at the time of the act;

(3) Knowing misrepresentation of any facts or circumstances surrounding any complaint, allegation or charge of misconduct; failure to answer any formal inquiry or complaint issued by or in the name of the North Carolina State Bar in any disciplinary matter; or contempt of the ~~council~~ Council or any committee of the North Carolina State Bar.

(c) Misconduct by any attorney shall be grounds for:

(1) Disbarment; ~~or~~

(2) Suspension for a period up to but not exceeding five years, any portion of which may be stayed upon reasonable conditions to which the offending attorney consents; ~~or~~

(3) Censure -- A censure is a written form of discipline more serious than a reprimand issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession or members of the public, but the protection of the public does not require suspension of the attorney's license; ~~or~~

(4) Reprimand -- A reprimand is a written form of discipline more serious than an admonition issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct, but the protection of the public does not require a censure. A reprimand is generally reserved for cases in which the attorney's conduct has caused harm or potential harm to a client, the administration of justice, the profession, or members of the public; or

(5) Admonition -- An admonition is a written form of discipline imposed in cases in which an attorney has committed a minor violation of the Rules of Professional Conduct.

Any order disbarring or suspending an attorney may impose reasonable conditions precedent to reinstatement. No attorney who has been disbarred by the Disciplinary Hearing Commission, the Council, or by order of any court of this State may seek reinstatement to the practice of law prior to five years from the effective date of the order of disbarment. Any order of the Disciplinary Hearing Commission or the Grievance Committee imposing ~~a censure, reprimand, or admonition~~ an admonition, reprimand, censure, or stayed suspension may also require the attorney to complete a reasonable amount of continuing legal education in addition to the minimum amount required by the North Carolina Supreme Court.

(d) Any attorney admitted to practice law in this State, who is convicted of or has tendered and has had accepted, a plea of guilty or no contest to, a criminal offense showing professional unfitness, may be ~~suspended from the~~

~~practice of law, but this suspension shall not take place pending appeal of the conviction.~~ disciplined based upon the conviction, without awaiting the outcome of any appeals of the conviction. An order of discipline based solely upon a conviction of a criminal offense showing professional unfitness shall be vacated immediately upon receipt by the Secretary of the North Carolina State Bar of a certified copy of a judgment or order reversing the conviction. The fact that the attorney's criminal conviction has been overturned on appeal shall not prevent the North Carolina State Bar from conducting a disciplinary proceeding against the attorney based upon the same underlying facts or events that were the subject of the criminal proceeding.

(d1) An attorney who is disciplined as provided in subsection (d) of this section may petition the court in the trial division in the judicial district where the conviction occurred for an order staying the disciplinary action pending the outcome of any appeals of the conviction. The court may grant or deny the stay in its discretion upon such terms as it deems proper. A stay of the disciplinary action by the court shall not prevent the North Carolina State Bar from going forward with a disciplinary proceeding against the attorney based upon the same underlying facts or events that were the subject of the criminal proceeding.

(e) Any attorney admitted to practice law in this State who is disciplined in another jurisdiction shall be subject to the same discipline in this State: Provided, that the discipline imposed in the other jurisdiction does not exceed that provided for in subsection (c) above and that the attorney was not deprived of due process in the other jurisdiction.

(f) Upon application by the North Carolina State Bar, misconduct by an attorney admitted to practice in this State may be restrained or enjoined where the necessity for prompt action exists regardless of whether a disciplinary proceeding in the matter of ~~such~~ the conduct is pending. ~~Such~~ The application shall be filed in the Superior Court of Wake County and shall be governed by the procedure set forth in G.S. 1A-1, Rule 65.

(g) Any member of the North Carolina State Bar may be transferred to disability inactive status for mental ~~incompetence~~ incompetence, ~~or~~ physical ~~disability~~ disability, or substance abuse interfering with the attorney's ability to competently engage in the practice of law under ~~such rules and procedures as the council shall promulgate as provided in G.S. 84-21,~~ the rules and procedures the Council adopts pursuant to G.S. 84-23.

(h) There shall be an appeal of right from any final order imposing admonition, reprimand, censure, ~~suspension~~ suspension, stayed suspension, or disbarment upon an attorney, or involuntarily transferring a member of the North Carolina State Bar to disability inactive status to the North Carolina Court of Appeals. Review by the appellate division shall be upon matters of law or legal inference. The procedures governing any ~~such~~ appeal shall be as provided by statute or court rule for appeals in civil cases. A final order which imposes disbarment or suspension for 18 months or more shall not be stayed except upon application, under the rules of the Court of Appeals, for a writ of supersedeas. A final order imposing suspension for less than 18 months or any other discipline except disbarment shall be stayed pending determination of ~~the~~ any ~~appeal.~~ appeal of right.

(i) The North Carolina State Bar may invoke the process of the General Court of Justice to enforce the powers of the ~~council~~ Council or any committee to which the ~~council~~ Council delegates its authority.

(j) The North Carolina State Bar may apply to appropriate courts for orders necessary to protect the interests of clients of missing, suspended, disbarred, disabled, ~~incapacitated~~ or deceased attorneys.

The senior regular resident judge of the superior court of any district wherein a member of the North Carolina State Bar resides or maintains an office shall have the authority and power to enter ~~such~~ orders ~~as are~~ necessary to protect the interests of ~~such~~ the clients, including the authority to order the payment of ~~counsel fees from the estate of the member~~ compensation by the member or the estate of a deceased or disabled member to any attorney appointed to administer or conserve the law practice of the member. Compensation awarded to a member serving under this section awarded from the estate of a deceased member shall be considered an administrative expense of the estate for purposes of determining priority of payment."

Sec. 19. G.S. 84-28.1(a) reads as rewritten:

"(a) There shall be a disciplinary hearing commission of the North Carolina State Bar which shall consist of 15 members. Ten of these members shall be members of the North Carolina State Bar, and shall be appointed by the ~~council.~~ Council. The other five shall be citizens of North Carolina not licensed to practice law in this or any other state, three of whom shall be appointed by the Governor, one by the Lieutenant Governor, and one by the Speaker of the House of Representatives. The ~~council~~ Council shall designate one of its appointees as ~~chairman~~ chair and another as ~~vice-chairman.~~ vice-chair. The ~~chairman~~ chair shall have actively practiced law in the courts of the State for at least 10 years. ~~When the commission is first selected, five members, including three appointed by the council, one appointed by the Governor and the one appointed by the Speaker of the House of Representatives, shall be appointed for terms of one year; five members, including three appointed by the council, one appointed by the Governor and the one appointed by the Lieutenant Governor, shall be appointed for terms of two years; and the remaining five members shall be appointed for terms of three years. All such initial terms shall commence July 1, 1975. Thereafter five members shall be appointed each year to three-year terms to fill the positions of the terms then expiring.~~ Except as set out herein, the terms of members of the commission are set at three years commencing on the first day of July of the year of their appointment. The ~~council,~~ Council, the Governor, the Lieutenant Governor and the Speaker of the House of Representatives, respectively, shall appoint members to fill ~~the~~ unexpired ~~term~~ terms when ~~any vacancy is~~ vacancies are created by resignation, disqualification, disability or death. No member may serve more than a total of seven years or a one-year term and two consecutive three-year terms: Provided, that any member or former member who is designated ~~chairman~~ chair may serve one additional three-year term in that capacity. No member of the ~~council~~ Council may be appointed to the commission."

Sec. 20. G.S. 84-28.2 reads as rewritten:

"§ 84-28.2. *Persons immune from suit.*

Persons shall be immune from suit for all statements made without malice, and intended for transmittal to the North Carolina State Bar or any board, committee, officer, agent or employee thereof, or given in any investigation or proceedings, pertaining to alleged ~~misconduct, incapacity~~ misconduct or disability or to reinstatement of an attorney. The protection of this immunity does not exist, however, as to statements made to others not intended for ~~such~~ this use."

Sec. 21. G.S. 84-29 reads as rewritten:

"§ 84-29. *Evidence and witnesses.*

In any investigation of charges of professional ~~misconduct, incapacity~~ misconduct or disability or in petitions for reinstatement, the ~~council~~ Council and any committee thereof, and the disciplinary hearing commission, and any committee thereof, may administer oaths and affirmations and shall have the power to subpoena and examine witnesses under oath, and to compel their attendance, and the production of books, papers and other documents or writings deemed by it necessary or material to the inquiry. Each subpoena shall be issued under the hand of the secretary-treasurer or the president of the ~~council~~ Council or the ~~chairman~~ chair of the committee appointed to hear the charges, and shall have the force and effect of a summons or subpoena issued by a court of record, and any witness or other person who shall refuse or neglect to appear in obedience thereto, or to testify or produce the books, papers, or other documents or writings required, shall be liable to punishment for contempt either by the ~~council~~ Council or its committee or a hearing committee of the disciplinary hearing commission through its ~~chairman~~ chair pursuant to the procedures set out in Chapter ~~5A,~~ 5A of the General Statutes, but with the right to appeal therefrom. Depositions may be taken in any investigations of professional misconduct as in civil proceedings, but the ~~council~~ Council or the committee hearing the case may, in its discretion, whenever it believes that the ends of substantial justice so require, direct that any witness within the State be brought before it. Witnesses giving testimony under a subpoena before the ~~council~~ Council or any committee thereof, or the disciplinary hearing commission or any committee thereof, or by deposition, shall be entitled to the same fees as in civil actions.

In cases heard before the ~~council~~ Council or any committee thereof or the disciplinary hearing commission or any committee thereof, if the party shall be convicted of the ~~charges against him, he~~ charges, the party shall be taxed with the cost of the hearings: Provided, however, that ~~such~~ the bill of costs shall not include any compensation to the members of the ~~council~~ Council or committee before whom the hearings are conducted."

Sec. 22. G.S. 84-31 reads as rewritten:

"§ 84-31. *Counsel; investigators; powers; compensation.*

The ~~council~~ Council may appoint a member of the North Carolina State Bar ~~to prosecute~~ to represent the North Carolina State Bar in any proceedings in which it has an interest including reinstatement and the prosecution of charges of ~~misconduct, incapacity~~ misconduct or disability in ~~such~~ the hearings ~~as may be~~ that are held, including appeals, and may authorize ~~such~~ counsel to employ assistant counsel, investigators, and

administrative assistants in such numbers as it deems necessary. Counsel and investigators engaged in discipline, ~~incapacity~~ reinstatement, and disability matters shall have the authority throughout the State to serve subpoenas or other process issued by the ~~council~~ Council or any committee thereof or the disciplinary hearing commission or any committee thereof, in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice. The ~~council~~ Council may allow counsel, assistant counsel, investigators and administrative assistants such compensation as it deems proper."

Sec. 23. G.S. 84-32 reads as rewritten:

"*§ 84-32. Records and judgments and their effect; restoration of licenses.*

(a) In cases heard by the disciplinary hearing commission or any committee thereof, ~~a complete record of the proceedings and evidence~~ the proceedings shall be recorded by a certified court reporter and an official copy of all exhibits introduced into evidence shall be made and preserved in the office of the secretary-treasurer. Final judgments of suspension or disbarment shall be entered upon the judgment docket of the superior court in the district wherein the ~~accused~~ respondent resides or practices law, and also upon the minutes of the Supreme Court of North Carolina; and ~~such~~ the judgment shall be effective throughout the State.

(b) Whenever any attorney desires to voluntarily surrender his license, ~~he~~ the attorney must tender ~~his~~ the license and a written resignation to the ~~council,~~ Council. The ~~council,~~ Council, in its discretion, may accept or reject the tender. ~~such a tender with or without conditions, or reject such a tender. In the event such a tender is accepted, the council shall either enter an Order of Discipline or refer the matter to the disciplinary hearing commission for hearing in accordance with the rules and regulations prescribed by the council. The hearing committee of the disciplinary hearing commission may enter a final Order of Discipline or, if directed by the council, make a recommendation back to the council.~~ If the tender is accepted, the Council shall enter an order of disbarment. A copy of any order of disbarment ~~Order of Discipline~~ shall be filed with ~~the Clerk of the Supreme Court and with~~ the clerk of the superior court of the county ~~of residence or prior residence of the licensee or the county in which the attorney maintains an office for the practice of law,~~ where the respondent resides, maintains an office, or practices law and also upon the minutes of the Supreme Court of North Carolina. The judgment shall be effective throughout the State.

(c) Whenever any attorney has been deprived of ~~his~~ the attorney's license by suspension or disbarment, the ~~council~~ Council or the disciplinary hearing commission or the ~~Secretary-Treasurer~~ secretary-treasurer may, in accordance with rules and regulations prescribed by the ~~council,~~ Council, restore the license upon due notice being given and satisfactory evidence produced of proper reformation of ~~the licentiate~~ the suspended or disbarred attorney and of satisfaction of any conditions precedent to restoration.

(d) The Council has jurisdiction to determine any petition seeking the reinstatement of the license of any attorney disbarred or suspended by any court in its inherent power when requested by the court. The proceeding shall be governed by the rules and regulations adopted by the Council. The

disbarred or suspended attorney shall satisfy all conditions precedent to reinstatement generally imposed upon attorneys disbarred or suspended by the disciplinary hearing commission or the Council, as well as any conditions imposed by the court. Under no circumstances shall an attorney disbarred by a court or by the North Carolina State Bar be reinstated prior to five years from the effective date of the order of disbarment."

Sec. 24. G.S. 84-33 reads as rewritten:

"§ *84-33. Annual and special meetings.*

~~There shall be an annual meeting of the North Carolina State Bar, open to all members in good standing, to be held at such place and time after such notice (but not less than 30 days) as the council may determine, for the discussion of the affairs of the Bar and the administration of justice; and special meetings of the North Carolina State Bar may be called, on not less than 30 days' notice, by the council, or on the call, addressed to the council, of not less than twenty-five percent (25%) of the active members of the North Carolina State Bar; but at special meetings no subjects shall be dealt with other than those specified in the notice. Notice of all meetings, whether annual or special, may be given by publication in such newspapers of general circulation as the council may select, or, in the discretion of the council, by mailing notice to the secretary of the several district bars or to the individual active members of the North Carolina State Bar. The North Carolina State Bar shall not take any action in respect of any decision of the council or any committee thereof relating to admission, exclusion, discipline or punishment of any person or other action, save after notice in writing of the action of the council or committee proposed to be directed or overruled, which notice shall be given to the secretary-treasurer 30 days before the meeting, who shall give, by mail, at least 15 days' notice to the members of the North Carolina State Bar, and unless at the meeting two thirds of the members present and voting shall favor the motion to direct or overrule. There shall be no voting by proxy.~~

The Council shall hold an annual meeting and other meetings necessary to conduct the business of the North Carolina State Bar."

Sec. 25. G.S. 84-34 reads as rewritten:

"§ *84-34. Membership fees and list of members.*

Every active member of the North Carolina State Bar shall, prior to the first day of July of each year, ~~beginning with the year 1990,~~ pay to the secretary-treasurer an annual membership fee ~~of one hundred thirty-five dollars ($135.00),~~ in an amount determined by the Council but not to exceed two hundred dollars ($200.00), and every member shall notify the secretary-treasurer of ~~his~~ the member's correct ~~post-office~~ mailing address. Any member who fails to pay the required dues by the last day of June of each year shall be subject to a late fee in an amount determined by the Council but not to exceed thirty dollars ($30.00). All dues for prior years shall be as were set forth in the General Statutes then in effect. The ~~said~~ membership fee shall be regarded as a service charge for the maintenance of the several services ~~prescribed in~~ authorized by this Article, and shall be in addition to all fees ~~now~~ required in connection with admissions to practice, and in addition to all license taxes ~~now or hereafter~~ required by law. The ~~said~~ fee shall not be prorated: Provided, that no fee shall be required of an

attorney licensed after this Article shall have gone into effect until the first day of January of the calendar year following that in which ~~he shall have been~~ the attorney was licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The ~~said~~ fees shall be disbursed by the secretary-treasurer on the order of the ~~council.~~ Council. The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the ~~council,~~ Council, publish an account of the financial ~~transaction~~ transactions of the ~~council~~ Council in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and ~~post-office~~ mailing addresses forwarded to ~~him~~ the secretary-treasurer and from any other available sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this Article. The name of each of the active members who ~~shall be~~ are in arrears in the payment of membership fees ~~for one or more calendar years~~ shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein ~~said~~ the member or members reside, and the court shall thereupon take ~~such~~ action ~~as~~ that is necessary and proper. The names and addresses of ~~such~~ attorneys so certified shall be kept available to the public. The Secretary of Revenue is hereby directed to supply the secretary-treasurer, from ~~his record~~ records of license tax payments, with any information for which the secretary-treasurer may call in order to enable ~~him~~ the secretary-treasurer to comply with this requirement.

The ~~said~~ list submitted to several clerks of the superior court shall also be submitted to the ~~council of the North Carolina State Bar~~ Council at its October meeting of each year and it shall take ~~such~~ the action thereon ~~as~~ that is necessary and proper."

Sec. 26. G.S. 84-37 reads as rewritten:

"*§ 84-37. State Bar may investigate and enjoin unauthorized practice.*

(a) The ~~council~~ Council or any committee appointed by it for that purpose may inquire into and investigate any charges or complaints of unauthorized or unlawful practice of law. The ~~council~~ Council or any committee of its members appointed for that purpose may inquire into and investigate any charges or complaints of unauthorized or unlawful practice of law. The ~~council~~ Council may bring or cause to be brought and maintain in the name of the North Carolina State Bar an action or actions, upon information or upon the complaint of any ~~private~~ person or ~~of any bar association against any person, partnership, corporation or association and any employee, agent, director, or officer thereof who~~ entity against any person or entity that engages in rendering any legal service or makes it a practice or business to render legal services which are unauthorized or prohibited by law or statutes relative thereto. No bond for cost shall be required in ~~such~~ the proceeding.

(b) In an action brought under this section the final judgment if in favor of the plaintiff shall perpetually restrain the defendant or defendants from the commission or continuance of the act or acts complained of. A

temporary injunction to restrain the commission or continuance thereof may be granted upon proof or by affidavit, that the defendant or defendants have violated any of the laws or statutes applicable to unauthorized or unlawful practice of law. The provisions of statute or rules relating generally to injunctions as provisional remedies in actions shall apply to ~~such~~ a temporary injunction and the proceedings thereunder.

(c) The venue for actions brought under this section shall be the superior court of any county in which ~~such~~ the acts constituting unauthorized or unlawful practice of law are alleged to have been committed or in which there appear reasonable grounds that they will be committed or in the county where the defendants in ~~such~~ the action ~~reside.~~ reside or in Wake County.

(d) The plaintiff in ~~such~~ the action shall be entitled to examination of the adverse party and witnesses before filing complaint and before trial in the same manner as provided by law for the examination of parties.

(e) This section shall not repeal or curtail any remedy now provided in cases of unauthorized or unlawful practice of law, and nothing contained herein shall be construed as disabling or abridging the inherent powers of the court in ~~such~~ these matters.

(f) The Council or its duly appointed committee has the authority to issue advisory opinions in response to inquiries from members or the public regarding whether contemplated conduct would constitute the unauthorized practice of law."

Sec. 27. This act becomes effective October 1, 1995, and applies to orders of disbarment entered on or after that date and disciplinary proceedings based upon convictions of offenses committed on or after that date. Section 25 applies to dues and fees for years beginning with 1996.

In the General Assembly read three times and ratified this the 13th day of July, 1995.

S.B. 663 **CHAPTER 432**

AN ACT MAKING A QUALIFIED EXCEPTION FOR THE CITY OF WILMINGTON AND NEW HANOVER COUNTY FROM THE PUBLIC RECORDS ACT FOR CERTAIN GEOGRAPHICAL INFORMATION SYSTEMS.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 82 of the 1993 Session Laws reads as rewritten:

"Sec. 2. This act applies to the Cities of ~~Greensboro and High Point and Guilford County and Pitt County and Mecklenburg County and Nash County~~ Greensboro, High Point, and Wilmington and the Counties of Guilford, Nash, New Hanover, Mecklenburg, and Pitt only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1995.

S.B. 689 **CHAPTER 433**

AN ACT TO PROVIDE FOR SPECIAL REGISTRATION PLATES FOR SUPPORTERS OF THE OLYMPIC GAMES AND SQUARE DANCE CLUBS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision that reads:

"(17a) Olympic Games. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or insignia representing the Olympic Games."

Sec. 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
All Other Special Plates	$10.00."

Sec. 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Recreation and Natural Heritage Trust Fund (RNHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	RNHTF
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

Sec. 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b4) Olympic Games. -- The Division may not issue an Olympic Games special plate unless it receives 300 or more applications for the plate and the U.S. Olympic Committee licenses, without charge, the State to develop a plate bearing the Olympic Games symbol and name. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Olympic Games plates to the N.C. Health and Fitness Foundation, Inc., which will allocate the funds as follows:

(1) Fifty percent (50%) to the U.S. Olympic Committee to assist in training olympic athletes.

(2) Twenty-five percent (25%) to North Carolina Amateur Sports to assist with administration of the State Games of North Carolina.

(3) Twenty-five percent (25%) to the Governor's Council on Physical Fitness and Health to support local fitness council development throughout North Carolina."

Sec. 4.1. G.S. 20-79.4(b) is amended by adding a new subdivision immediately after subdivision (22b) to read:

"(22c) Square Dance Clubs. -- Issuable to a member of a recognized square dance organization exempt from corporate income tax under G.S. 105-130.11(a)(5). The plate shall bear a word or phrase identifying the club and the emblem of the club. The Division shall not issue a dance club plate authorized by this subdivision unless it receives at least 300 applications for that dance club plate."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1995.

S.B. 752 **CHAPTER 434**

AN ACT TO CLARIFY THE AUTHORITY OF COUNTIES THAT HAVE PROTECTED MOUNTAIN RIDGES TO ESTABLISH COUNTY SERVICE DISTRICTS TO PROVIDE FOR CERTAIN ROAD NEEDS OF THE DISTRICT AND TO ALLOW UNDER CERTAIN CIRCUMSTANCES THE MAINTENANCE OF PUBLIC ROADS LYING OUTSIDE THE DISTRICT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-301(d) reads as rewritten:

"(d) The board of commissioners of a county that contains a protected mountain ridge, as defined by G.S. 113A-206(6), may define any number of service ~~districts~~ districts, composed of subdivision lots within one or more contiguous subdivisions that are served by common public roads, to finance for the district the maintenance of such public roads that are ~~located in the district, are not maintained by the Department of Transportation, and were recorded on a plat in the register of deeds office before October 1, 1975,~~ either located in the district or provide access to some or all lots in the district from a State road, where some portion of those roads is not subject

to compliance with the minimum standards of the Board of Transportation set forth in G.S. 136-102.6. The service district or districts created shall include only ~~property within such platted subdivision~~ subdivision lots within the subdivision, and one or more additional contiguous ~~platted subdivisions,~~ subdivisions, where the property owners' association, whose purpose is to represent these subdivision lots, agrees to be included in the service district. For subdivision lots in an additional contiguous subdivision or for other adjacent or contiguous property to be annexed according to G.S. 153A-303, the property owners' association representing the subdivision or property to be annexed must approve the annexation. For the purposes of this subsection: (i) 'subdivision lots' are defined as either separate tracts appearing of record upon a recorded plat, or other lots, building sites, or divisions of land for sale or building development for residential purposes; and (ii) 'public roads' are defined as roads that are in actual open use as public vehicular areas, or dedicated or offered for dedication to the public use as a road, highway, street, or avenue, by a deed, grant, map, or plat, and that have been constructed and are in use by the public, but that are not currently being maintained by any public authority."

Sec. 2. G.S. 136-98 reads as rewritten:

"*§ 136-98. Prohibition of local road taxes and bonds and construction of roads by local authorities; existing contracts.*

(a) From and after the first day of July, 1931, no county or road district by authority of any public, public-local, or private act shall levy any taxes for the maintenance, improvement, reconstruction, or construction of any of the public roads in the various and several counties of the State, nor shall any county, through the board of commissioners thereof or the highway commission, nor shall any district or township highway commission, issue or sell or enter into any contract to issue or sell any bonds heretofore authorized to be issued and sold, but unissued and unsold, for the purpose of obtaining money with which to improve, maintain, reconstruct, or construct roads, except for the purpose of discharging obligations entered into prior to the ratification of this section, and all acts authorizing the board of county commissioners, the county highway commissions, district highway or township commissions, to issue and sell bonds for the purpose aforesaid, are hereby amended so as to conform to this section. No board of county commissioners nor county highway commission, nor district nor township highway commission from and after the passage of this section shall enter into any contract to build or construct roads in the various and several counties except for such projects as can be completed and paid for prior to July 1, 1931. All contracts heretofore entered into by any county through the board of county commissioners, county highway commission, and all contracts heretofore entered into by any district or township highway commission which shall be incomplete on July 1, 1931, shall be taken over by the Department of Transportation and completed by the Department of Transportation by the use of money and funds applicable thereto, by the terms of the said contracts. Nothing in this section or in any section of Chapter 145 of the Public Laws of 1931 that may appear in this Code shall be construed to prohibit the levying of taxes authorized by law for the payment of interest or principal on outstanding bonds or other evidences of

debt lawfully issued. Any county or road district which has heretofore issued bonds or other evidences of debt by authority of law for road improvement purposes may refund said bonds or other evidences of debt under and pursuant to the laws of the State of North Carolina relative thereto.

(b) Nothing in this Article prohibits counties from establishing service districts for road maintenance under Part 1, Article 16 of Chapter 153A of the General Statutes."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1995.

S.B. 453 **CHAPTER 435**

AN ACT TO MAKE CHANGES IN THE PROSPECTIVE TEACHERS SCHOLARSHIP LOAN PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-471 reads as rewritten:

"*§ 115C-471. Fund administered by State Superintendent of Public Instruction; rules and regulations.*

The Scholarship Loan Fund for Prospective Teachers shall be administered by the State Superintendent of Public Instruction, under rules adopted by the State Board of Education and subject to the following directions and limitations:

(1) Any resident of North Carolina who is interested in preparing to teach in the public schools of the State may apply in writing to the State Superintendent of Public Instruction for a regular scholarship loan in the amount of not more than ~~two thousand dollars ($2,000)~~ two thousand five hundred dollars ($2,500) per academic school year. An applicant who has been employed for at least one year as a teacher assistant and who is currently employed as a teacher assistant may apply for a scholarship loan from funds earmarked for teacher assistants in the amount of not more than one thousand two hundred dollars ($1,200) per academic school year.

(2) All scholarship loans shall be evidenced by notes made payable to the State Board of Education that bear interest at the rate of ~~six percent (6%)~~ ten percent (10%) per annum from and after September 1 following fulfillment by a prospective teacher of the requirements for a certificate based upon the entry level degree; or in the case of persons already teaching in the public schools who obtain scholarship loans, the notes shall bear interest at the prescribed rate from and after September 1 of the school year beginning immediately after the use of the scholarship loans; or in the event any such scholarship is terminated under the provisions of subdivision (3) of this section, the notes shall bear interest from the date of termination. A minor recipient who signs a note shall also obtain the endorsement thereon by a parent, if there be a living parent, unless the endorsement is waived by the Superintendent of Public Instruction. The minor recipient shall be

obligated upon the note as fully as if the recipient were of age and shall not be permitted to plead such minority as a defense in order to avoid the obligations undertaken upon the notes.

(3) Each recipient of a scholarship loan under the provisions of this program shall be eligible for scholarship loans each year until the recipient has qualified for a certificate based upon the entry level degree, but the recipient shall not be so eligible for more than the minimum number of years normally required for qualifying for the certificate. The permanent withdrawal of any recipient from college or failure of the recipient to do college work in a manner acceptable to the State Superintendent of Public Instruction shall immediately forfeit the recipient's right to retain the scholarship and subject the scholarship to termination by the State Superintendent of Public Instruction in the Superintendent's discretion. All terminated scholarships shall be regarded as vacant and subject to being awarded to other eligible persons.

(4) Except under emergency conditions applicable to the State Superintendent of Public Instruction, recipients of scholarship loans shall enter the public school system of North Carolina at the beginning of the next school term after qualifying for a certificate based upon the entry level degree or, in case of persons already teaching in the public schools, at the beginning of the next school term after the use of the loan. All teaching service for which the recipient of any scholarship loan is obligated shall be rendered by August 31 of the seventh school year following graduation.

(5) For each full school year taught in a North Carolina public school, the recipient of a scholarship loan shall receive credit upon the amount due by reason of the loan equal to the loan amount for a school year as provided in the note plus credit for the total interest accrued on that ~~amount; provided, however, that in~~ amount. Also, the recipient of the loan shall receive credit upon the total amount due by reason of all four years of the loan if the recipient teaches for three consecutive years, or for three years interrupted only by an approved leave of absence, at a North Carolina public school that is in a low-performing school system or a school system on warning status at the time the recipient accepts employment with the local school administrative unit. In lieu of teaching in the public school, a recipient may elect to pay in cash the full amount of scholarship loans received plus interest then due thereon or any part thereof that has not been canceled by the State Board of Education by reason of teaching service rendered.

(6) If any recipient of a scholarship loan dies during the period of attendance at a college or university under a scholarship loan or before the scholarship loan is satisfied by payment or teaching service, any balance shall be automatically canceled.

If any recipient of a scholarship loan fails to fulfill the recipient's obligations under subdivision (4) of this section, other than as provided above, the amount of the loan and accrued

interest, if any, shall be due and payable from the time of failure to fulfill the recipient's obligations.

(7) The State Superintendent of Public Instruction shall award scholarship loans with due consideration to factors and circumstances such as aptitude, purposefulness, scholarship, character, financial need, and geographic areas or subjects of instruction in which the demands for teachers are greatest. Since the primary purpose of this Article is to attract worthy young people to the teaching profession, preference for scholarship loans, except for the scholarship loans from funds earmarked for teacher assistants, shall be given to high school seniors in the awarding of scholarships. In awarding scholarship loans from funds earmarked for teacher assistants, preference shall be given to applicants who have already earned a baccalaureate degree or who have been formally admitted to an approved teacher education program in North Carolina."

Sec. 2. This act is effective upon ratification. The amendments to G.S. 115C-471(2) contained in Section 1 of this act apply only to scholarship loan agreements entered into after the effective date of this act.

In the General Assembly read three times and ratified this the 13th day of July, 1995.

H.B. 311 **CHAPTER 436**

AN ACT TO MAKE USE OF A COUNTERFEIT TRADEMARK A CRIME IN NORTH CAROLINA, AND TO MODIFY THE CIVIL REMEDIES AVAILABLE FOR FRAUDULENT REGISTRATION OF A TRADEMARK AND INFRINGEMENT OF A TRADEMARK.

The General Assembly of North Carolina enacts:

Section 1. Chapter 80 of the General Statutes is amended by adding a new section to read:

"§ *80-11.1. Criminal use of counterfeit trademark.*

(a) For purposes of this section:

(1) 'Counterfeit mark' means a mark that is used in connection with the sale or offering for sale of goods or services that are identical to or substantially indistinguishable from the goods or services with which the mark is used or registered, and the use of which is likely to cause confusion, mistake, or deception, with the use occurring without authorization of the:

a. Owner of the registered mark, and is identical to or substantially indistinguishable from a mark that is registered on the principal register of the United States Patent and Trademark Office or with the Trademark Division of the Department of the Secretary of State; or

b. Owner of the unregistered mark and is identical to or substantially indistinguishable from symbols, signs, emblems, insignias, trademarks, trade names, or words protected by

section 110 of the Amateur Sports Act of 1978 (Title 36, U.S.C. § 380).

(2) 'Retail sales value' means the value computed by multiplying the number of items having a counterfeit mark used thereon or in connection therewith, by the retail price at which a similar item having a mark used thereon or in connection therewith, the use of which is authorized by the owner, is offered for sale to the public.

(b) Any person who knowingly and willfully (i) uses or causes to be used a counterfeit mark on or in connection with goods or services intended for sale or (ii) has possession, custody, or control of goods having a counterfeit mark used thereon or in connection therewith, that are intended for sale, shall be punished as follows:

(1) If the goods or services having a counterfeit mark used thereon or in connection therewith, or on or in connection with which the person intends to use a counterfeit mark, have a retail sales value not exceeding three thousand dollars ($3,000), the person is guilty of a Class 2 misdemeanor;

(2) If the goods or services having a counterfeit mark used thereon or in connection therewith, or on or in connection with which the person intends to use a counterfeit mark, have a retail sales value exceeding three thousand dollars ($3,000) but not exceeding ten thousand dollars ($10,000), the person is guilty of a Class I felony; and

(3) If the goods or services having a counterfeit mark used thereon or in connection therewith, or on or in connection with which the person intends to use a counterfeit mark, have a retail sales value exceeding ten thousand dollars ($10,000), the person is guilty of a Class H felony.

The possession, custody, or control of more than 25 items having a counterfeit mark used thereon or in connection therewith creates a presumption that the person having possession, custody, or control of the items intended to sell those items.

(c) Any person who knowingly (i) uses any object, tool, machine, or other device to produce or reproduce a counterfeit mark or (ii) has possession, custody, or control of any object, tool, machine, or device with intent to produce or reproduce a counterfeit mark, is guilty of a Class H felony.

(d) Any personal property, including any item, object, tool, machine, device, or vehicle of any kind, employed as an instrumentality in the commission of, or in aiding or abetting in the commission of a violation of subsection (b) or (c) of this section, is subject to seizure and forfeiture and shall be disposed of in accordance with the provisions of Article 2 of Chapter 15 of the General Statutes.

(e) For purposes of enforcing this section, the Department of the Secretary of State's law enforcement agents have statewide jurisdiction. These law enforcement agents may assist local law enforcement agencies in their investigations and may initiate and carry out, in coordination with local law enforcement agencies, investigations of violations of this section. These law enforcement agents have all of the powers and authority of law

enforcement officers when executing arrest warrants. These agents shall be authorized to have fictitious licenses, license tags, and registrations, pursuant to G.S. 20-39(h) or G.S. 14-250, for the purpose of conducting criminal investigations.

(f) The Secretary of State may refer any available evidence concerning violations of this section to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

The attorneys employed by the Secretary of State shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and the Secretary of State approves.

(g) Pursuant to an agreement between the departments, the Secretary of State may refer any available evidence concerning violations of this section to the Secretary of Revenue for purposes of determining the obligations of the violators of this section to the State under the provisions of Chapter 105 of the General Statutes."

Sec. 2. G.S. 80-12 reads as rewritten:

"§ *80-12.* ~~*Civil remedies.*~~ *Violation a deceptive or unfair trade practice.*

~~Any owner of a mark registered under this Article may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display or sale; such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case, be delivered to an officer of the court, or to the complainant, to be destroyed; and such court having granted any such injunction or ordered any such payment shall require the defendants to pay to said owner a penalty of not less than two hundred dollars ($200.00) and not more than one thousand dollars ($1,000) in addition to such other relief, provided that such court shall have found that said owner shall have registered his mark prior to the date said defendants shall have first used the infringing mark in this State.~~

~~The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this State.~~

A violation of G.S. 80-10 or G.S. 80-11 constitutes a violation of G.S. 75-1.1."

Sec. 3. This act becomes effective December 1, 1995, and applies to offenses committed on or after that date and to causes of action arising on or after that date.

In the General Assembly read three times and ratified this the 13th day of July, 1995.

H.B. 305 **CHAPTER 437**

AN ACT TO FURTHER EXTEND EXPIRING PROVISIONS.

The General Assembly of North Carolina enacts:

SALARIES/GOVERNMENT EMPLOYEES

Section 1. Section 2 of Chapter 358 of the 1995 Session Laws reads as rewritten:

"Sec. 2. (a) The salary schedules and specific salaries established by or under Sections 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.9(a), 7.9(b), 7.10, 7.11, 7.12, 7.13, 19.6, or 19.7 of Chapter 769 of the 1993 Session Laws shall remain until ~~July 14,~~ July 21, 1995, at the level set by or under those sections as of June 30, 1995.

(b) No person may receive a salary increase under G.S. 7A-102(c), 126-7 or 20-187.3(a) prior to ~~July 14,~~ July 21, 1995. No State employee or officer may prior to ~~July 14,~~ July 21, 1995, receive a merit increase or annual increment. No employee or officer subject to the teacher salary schedule or the school-based administrator salary schedule shall receive an increment until ~~July 14,~~ July 21, 1995."

CONTINUE MEDIATED SETTLEMENT PILOT

Sec. 2. (a) G.S. 7A-38(o), as amended by Section 3 of Chapter 358 of the 1995 Session Laws, reads as rewritten:

"(o) Report on pilot program. The Administrative Office of the Courts shall file a written report with the General Assembly on the evaluation of the pilot program on or before May 1, 1995. The pilot program shall terminate on ~~July 14,~~ July 21, 1995."

(b) Section 3(b) of Chapter 358 of the 1995 Session Laws reads as rewritten:

"(b) Notwithstanding the provisions of G.S. 7A-38(n), the Administrative Office of the Courts may use funds available to the Judicial Department from July 1, 1995, to ~~July 14,~~ July 21, 1995, for the purpose of operating the pilot program."

EXTEND THE SUNSET OF THE STATUTE PERMITTING PRIVATE CONTRACT PARTICIPATION BY THE DEPARTMENT OF TRANSPORTATION

Sec. 3. Section 2 of Chapter 860 of the 1987 Session Laws, as amended by Section 1 of Chapter 749 of the 1989 Session Laws, Section 1 of Chapter 272 of the 1991 Session Laws, Section 2 of Chapter 183 of the 1993 Session Laws, and Section 5 of Chapter 358 of the 1995 Session Laws reads as rewritten:

"Sec. 2. This act is effective upon ratification and shall expire ~~July 14,~~ July 21, 1995."

EXTEND PUBLIC HEALTH STUDY COMMISSION

Sec. 4. Section 8.1 of Chapter 771 of the 1993 Session Laws as amended by Section 6 of Chapter 358 of the 1995 Session Laws reads as rewritten:

"Sec. 8.1. This act is effective upon ratification. Part II of this act is repealed on ~~July 14,~~ July 21, 1995."

EXTEND BEAVER DAMAGE CONTROL

Sec. 5. Subsection (h) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993

Session Laws, by Section 27.3 of Chapter 769 of the 1993 Session Laws, and Section 7 of Chapter 358 of the 1995 Session Laws reads as rewritten:

"(h) Subsections (a) through (d) of this section expire ~~July 14,~~ July 21, 1995."

EXTEND THE SUNSET FOR THE MEDIATION PROGRAM FOR THE INDUSTRIAL COMMISSION

Sec. 6. (a) Section 5 of Chapter 399 of the 1993 Session Laws as amended by Section 8 of Chapter 358 of the 1995 Session Laws reads as rewritten:

"Sec. 5. Section 3 of this act is effective upon ratification. Sections 1, 2, and 4 of this act become effective October 1, 1993, only if the General Assembly appropriates funds to implement the purpose of these sections, expire ~~July 14,~~ July 21, 1995, and apply to claims pending on or filed after the effective date."

(b) Section 5.4 of Chapter 679 of the 1993 Session Laws as amended by Section 8 of Chapter 358 of the 1995 Session Laws reads as rewritten:

"Sec. 5.4. Subsection (c) of G.S. 97-80 shall expire ~~July 14,~~ July 21, 1995, in accordance with the provisions of Chapter 399 of the 1993 Session Laws, unless the General Assembly amends Chapter 399 of the 1993 Session Laws to provide otherwise."

Sec. 7. Section 9 of Chapter 358 of the 1995 Session Laws reads as rewritten:

"Sec. 9. This act is effective upon ratification, but Sections 2 and 3 and Sections 5 through 8 expire ~~July 14,~~ July 21, 1995."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1995.

S.B. 6 **CHAPTER 438**

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO ESTABLISH RIGHTS FOR VICTIMS OF CRIME.

The General Assembly of North Carolina enacts:

Section 1. Article I of the Constitution of North Carolina is amended by adding a new section to read:

"*Sec. 37. Rights of victims of crime.*

(1) *Basic rights.* Victims of crime, as prescribed by law, shall be entitled to the following basic rights:

(a) The right as prescribed by law to be informed of and to be present at court proceedings of the accused.

(b) The right to be heard at sentencing of the accused in a manner prescribed by law, and at other times as prescribed by law or deemed appropriate by the court.

(c) The right as prescribed by law to receive restitution.

(d) The right as prescribed by law to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.

(e) The right as prescribed by law to receive information about the conviction or final disposition and sentence of the accused.

(f) The right as prescribed by law to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.

(g) The right as prescribed by law to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.

(h) The right as prescribed by law to confer with the prosecution.

(2) *No money damages; other enforcement.* Nothing in this section shall be construed as creating a claim for money damages against the State, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The General Assembly may provide for other remedies to ensure adequate enforcement of this section.

(3) *No ground for relief in criminal case.* The failure or inability of any person to provide a right or service provided under this section may not be used by a defendant in a criminal case, an inmate, or any other accused as a ground for relief in any trial, appeal, postconviction litigation, habeas corpus, civil action, or any similar criminal or civil proceeding."

Sec. 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the general election to be held in November 1996, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment adding Victims' Rights Amendment, giving crime victims basic rights to participate in the justice system".

Sec. 3. If a majority of the votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1995.

S.B. 491 **CHAPTER 439**

AN ACT TO MODIFY THE MINIMUM STREAMFLOW REQUIRED IN THE LENGTH OF THE STREAM AFFECTED BY CERTAIN DAMS OPERATED BY SMALL HYDROELECTRIC POWER PRODUCERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.31, as amended by Chapter 184 of the 1995 Session Laws, is amended by adding a new subsection to read:

"(e) The minimum streamflow in the length of the stream affected by a dam to which subsections (c) and (d) of this section do not apply shall be

established as provided in subsection (b) of this section. Subsections (c) and (d) of this section do not apply if the length of the stream affected:

(1) Receives a discharge of waste from a treatment works for which a permit is required under Part 1 of this Article; or

(2) Includes any part of a river or stream segment that:

a. Is designated as a component of the State Natural and Scenic Rivers System by G.S. 113A-35.1 or G.S. 113A-35.2.

b. Is designated as a component of the national Wild and Scenic Rivers System by 16 U.S.C. §§ 1273 and 1274."

Sec. 2. This act is effective on and after 6 June 1995.

In the General Assembly read three times and ratified this the 17th day of July, 1995.

H.B. 222 **CHAPTER 440**

AN ACT TO MAKE A TECHNICAL CORRECTION TO G.S. 120-70.2 REGARDING FILLING OF VACANCIES ON THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE AND PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF JO ANNE SANFORD TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION AND OF THE APPOINTMENT OF ROBERT P. GRUBER AS EXECUTIVE DIRECTOR OF THE PUBLIC STAFF OF THE NORTH CAROLINA UTILITIES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-70.2 reads as rewritten:

"*§ 120-70.2. Appointment of members and organization.*

The Joint Committee shall consist of six sitting members of the General Assembly. Three shall be appointed by the President Pro Tempore of the Senate from the membership of the Senate and three shall be appointed by the Speaker of the House of Representatives from the membership of the House. Members will serve at the pleasure of their appointing officer and any vacancies occurring on the Joint Committee shall be filled by the ~~presiding~~ appointing officer of the appropriate house. The President Pro Tempore of the Senate shall designate one Senator to serve as cochairman and the Speaker of the House of Representatives shall designate one Representative to serve as cochairman. A quorum shall consist of four members."

Sec. 2. Notwithstanding the provisions of G.S. 62-10(a) requiring confirmation to be by joint resolution, the appointment of Jo Anne Sanford to the North Carolina Utilities Commission for a term to begin July 1, 1995, and expire June 30, 2003, is confirmed.

Sec. 3. Notwithstanding the provisions of G.S. 62-15(a) requiring confirmation to be by joint resolution, the appointment of Robert P. Gruber as Executive Director of the Public Staff of the North Carolina Utilities Commission for a term to begin July 1, 1995, and expire June 30, 2001, is confirmed.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1995.

H.B. 694 **CHAPTER 441**

AN ACT TO PROVIDE FOR PRIVATE SERVICE OF PROCESS IN WAKE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 4(a) reads as rewritten:

"(a) Summons -- Issuance; who may serve. -- Upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days. The complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the sheriff of the county where service is to be ~~made~~ made, a private process server appointed by the clerk of court, or some other person duly authorized by law to serve summons. Upon the request of a party seeking service of process or that party's agent or attorney, service shall be made by a private process server appointed by the clerk of court. Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made. Upon request of the plaintiff separate or additional summons shall be issued against any defendants. A summons is issued when, after being filled out and dated, it is signed by the officer having authority to do so. The date the summons bears shall be prima facie evidence of the date of issue."

Sec. 2. Article 12 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"*§ 7A-114. Appointment of private process server.*

(a) Qualifications. -- The clerk of court of each county shall appoint persons as private process servers in accordance with this section. To be appointed as a private process server, a person must apply to the clerk of court for the appointment and must meet all of the following qualifications:

(1) Be at least 21 years old.
(2) Be a resident of this State.
(3) Have no mental or legal disability.
(4) Not be the defendant in a pending criminal action.
(5) Not have been convicted of a felony.
(6) In the five-year period before the date the application is filed, not have been convicted of a misdemeanor involving moral turpitude or dishonesty.
(7) Pass a written examination given by the clerk testing the applicant's knowledge of the laws and rules of procedure concerning the service of process.
(8) Post with the clerk a performance bond in the amount of one hundred thousand dollars ($100,000).
(9) Pay the application fee and the examination fee set by the clerk.

(b) Exam. -- The clerk of court shall determine the content of the examination an applicant must take to become a private process server and the passing grade for the examination. The clerk shall determine the number of times and the locations at which the examination is given in a year. The clerk shall give the examination at least once a year.

(c) Bond. -- A performance bond required for appointment as a private process server must be approved by the clerk of court and must be filed for the benefit of any person injured by malfeasance, misfeasance, neglect of duty, or incompetence in performing the duties of a private process server. If an applicant is or will be employed by an entity whose employees are covered by a bond of the employer, the applicant is not required to post a bond if the employer gives a written statement to the clerk affirming that the employer's bond applies or will apply to the applicant in performing the duties of a private process server.

The clerk of court may redeem, in whole or in part, a performance bond filed by a private process server when the clerk determines that a person has been injured by the malfeasance, misfeasance, neglect of duty, or incompetence of the private process server in serving process. Before the clerk redeems a bond, the clerk must hold a hearing on the matter.

(d) Appointment. -- The clerk of court shall appoint a person who meets the qualifications set in subsection (a) of this section as a private process server. The clerk shall issue each person appointed an identification number and an identification card. The card shall bear the process server's identification number, printed name, signature, photograph, and date the appointment expires. The clerk of court may contract with the City-County Bureau of Identification to make the identification cards. The person to whom a card is issued shall pay the fee required for issuance of the card. The clerk shall maintain a list of persons who hold appointments as private process servers.

(e) Effect. -- A person appointed as a private process server is authorized to serve civil process, except executions pursuant to Article 28 of Chapter 1 of the General Statutes or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes. A person appointed as a private process server shall take an oath that the person will honestly, diligently, and faithfully exercise the duties of a private process server. Process served by a private process server has the same effect as if it had been served by a sheriff.

(f) Renewal of Appointment. -- An appointment as a private process server expires one year after the date the clerk of court makes the appointment. An appointment may be renewed by filing an application for renewal with the clerk. The clerk shall renew an appointment if the process server has properly fulfilled the duties of a private process server during the year and the bond posted by the process server remains in effect.

(g) Revocation or Refusal to Renew Appointment. -- The clerk of court may revoke or refuse to renew a person's appointment as a private process server whenever the clerk determines that the private process server has not fully and properly discharged the duties of a private process server. Before the clerk revokes or refuses to renew an appointment for cause, the clerk must hold a hearing on the matter.

(h) Hearing. -- A clerk of court must notify a private process server of the time and date of a hearing. At the hearing, the process server may cross-examine witnesses, present evidence, and be heard. If the clerk decides to redeem the process server's bond or to revoke or to refuse to renew the process server's appointment, the clerk must make a written record of the findings of fact and set out in detail the reasons why the clerk decided to take that action. A person whose bond is redeemed or whose appointment is revoked or not renewed may appeal the action to the superior court of the county whose clerk made the appointment.

(i) Fees. -- The clerk of court shall set fees for filing an application to become a private process server, taking an examination to become a private process server, and issuing an identification card to a person appointed as a private process server. The application fee may not exceed one hundred dollars ($100.00). The fee for an identification card may not exceed ten dollars ($10.00).

The fee set in G.S. 7A-311 for service of civil process applies to process served by a private process server. The person who engages a private process server to serve process shall pay the fee set by that statute to the appropriate county at the time required by that statute.

The amount charged by a private process server for serving process is governed by the agreement between the process server and the person who engages the process server. The amount charged is not a process fee under G.S. 7A-311 and is not assessable under G.S. 7A-305 as a cost of a civil action.

(j) Offense. -- A private process server who, knowing that the person served is not the person named, serves process on a person not named in the paper is guilty of a Class 1 misdemeanor."

Sec. 3. This act applies to Wake County only.

Sec. 4. This act is effective upon ratification. This act shall sunset July 1, 1997.

In the General Assembly read three times and ratified this the 17th day of July, 1995.

S.B. 570 **CHAPTER 442**

AN ACT TO RESTRUCTURE THE LEXINGTON UTILITIES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 7.2 of the Charter of the City of Lexington, being Chapter 906, Session Laws of 1981, as amended by Chapter 806 of the 1985 Session Laws, Chapter 64, Session Laws of 1987, and Chapter 542 of the 1989 Session Laws, reads as rewritten:

"Section 7.2. *Utilities Commission.*

1. Creation; composition; terms.

A. A commission to be known as the Lexington Utilities Commission is established. The Commission shall be composed of ~~nine~~ five members. ~~Six members shall be residents of the respective electoral wards, one member must be a utility customer of the City of Lexington who resides outside the~~

~~city limits of the City of Lexington but inside Davidson County, and two at-large members may reside anywhere in the city. Appointments for the two at-large seats and for Ward 1 shall continue their term of office until December 1990. Appointments for Wards 2, 3, and 4 shall be made in December 1989; appointments for Wards 5 and 6 shall continue their terms until 1991; and a person who resides outside the corporate limits of the City of Lexington but inside Davidson County shall be appointed for a term to expire in December 1991.~~ Three members shall be residents of the City of Lexington, at least one member shall reside on the east side of Main Street, and one member shall reside on the west side of Main Street. Two members shall be residents of Davidson County who live outside of the city limits of the City of Lexington and shall be electrical customers of the City of Lexington. Appointments to the Lexington Utilities Commission shall be made by the City Council beginning in December 1995 to be effective January 1, 1996. The council shall appoint one member for a term of one year, two members for a term of two years, and two members for a term of three years. Thereafter, appointments shall be for three-year terms.

B. All appointments made thereafter as terms expire shall be for terms of three years. ~~No person shall be eligible for reappointment who has previously served two consecutive three-year terms, until one year after the expiration of the last term served.~~

~~B.~~ C. Terms shall expire at the first regular meeting of the City Council in December of each respective year. As the term of each of the members of the Commission expires, a successor shall be appointed by the City Council as provided in Part A of this section for a term of three years. The City Council shall fill vacancies on the Commission occurring otherwise than by expiration of ~~term,~~ term by appointment for the remainder of the unexpired term. All appointments shall be by majority vote of the membership of the City Council.

~~C.~~ D. If a member of the Utilities Commission establishes a residence outside ~~of the City or outside of the electoral ward from and for which he was appointed, or if the member who is not a resident of the City shall move outside of Davidson County,~~ the City of Lexington or on the opposite side of Main Street for which he was appointed, resulting in all members residing on either the west side or east side of Main Street, or if a member shall remove himself from Davidson County, or if a member living outside the city limits shall no longer be an electrical customer of the City of Lexington, then this shall be grounds for removal as a member of the Utilities Commission by action of the City Council.

2. Qualifications of Commissioners. The members of the Commission shall be residents of the City of Lexington, except for the member to be appointed outside of the City, and shall be citizens of the recognized ability and good business judgment and standing who, in the opinion of the City Council can and will perform their official duties to the best interest of the City and its inhabitants. In making appointments to the Utilities Commission, the City Council shall consider the racial diversity of the membership of the Commission.

3. Duties of Commission. The Commission shall act as an advisory body to the City Council in fixing rates and other charges concerning the public

enterprises operated by the City. The Commission shall keep the City Council and City Manager fully informed as to the general operations of the various systems and make appropriate recommendations. The Commission shall also hear citizen concerns and grievances, and hear and finally determine controversies concerning operation of the various systems, such as potential termination of service for nonpayment or other reasons, alleged violations of sewer use or surcharge regulations, and revocation of water and sewer permits, if those matters have not been resolved to the satisfaction of the parties at the administrative level. The Commission shall also perform such other duties as the Council may direct.

4. Organization. ~~That the~~ The members of the ~~said~~ Commission shall meet as soon after their appointment as possible, and shall elect out of their number a ~~Chairman,~~ Chairperson, a Vice-Chairperson, and a ~~Secretary and a Treasurer,~~ Secretary, each of whom shall be a different person. The Chairperson shall be a resident of the City of Lexington. The duties of each shall be such as is prescribed by said Commission from time to time, not inconsistent with the provisions of this act. The ~~Chairman~~ Chairperson selected shall not vote unless there is a tie vote.

5. Records. The Commission shall keep full and accurate records of all meetings held and official action taken.

6. Fiscal Procedures. The financial practices and operations of the public enterprises shall be in accordance with the Local Government Budget and Fiscal Control Act and the Local Government Bond Act contained in Chapter 159 of the General Statutes.

7. Operation of Public Enterprises. The City Manager, through his designees, shall be responsible for operation and management of the various systems, including supervision of personnel, and for implementation of policies set by the City Council. The Commission shall make studies and investigations as necessary to advise the City Council and City Manager in those responsibilities.

8. Reserved. ~~Public Enterprise Contracts and Property. All contracts concerning public enterprises shall be made, ratified or authorized in the same manner as other contracts of the City of Lexington. Title to all public enterprise property shall be held by the City of Lexington.~~

~~9a.~~ 8a. Appeals. Any appeals from the final decision of the Lexington Utilities Commission with regard to decisions concerning the operation of the various systems, including ~~terminations~~ termination of service for nonpayment and other reasons, and alleged violations of sewer use and surcharge regulations, and revocation of water and sewer permits, shall be appealed by way of certiorari to the General Court of Justice, Superior Court Division of Davidson County.

~~12.~~ 9. Budget Recommendations. The Commission shall make recommendations to the City Manager and City Council concerning the public enterprise budgets.

~~13.~~ 10. Financial Reports. The Commission shall make financial reports to the City Manager and the City Council as appropriate.

~~14.~~ 11. Compensation. As compensation for their services, each member of the Commission shall be paid a salary established by action of the City Council.

~~15.~~ 12. Neglect of Duty. That if any member of said Commission shall willfully neglect or fail to perform any duty required by the provisions of this ~~act~~ section or required by any rule or regulation by said Commission in pursuance of the authority contained in ~~said act,~~ this section, such member may be removed from office by a ~~two-thirds vote of the Utility Commission and~~ majority vote of the City Council of the City of ~~Lexington in joint session.~~ Lexington."

Sec. 2. The Lexington Utilities Commission in office as of December 31, 1995, is abolished, and the Lexington Utilities Commission as established by this act replaces it as of January 1, 1996.

Sec. 3. This act becomes effective January 1, 1996, except that appointments to the Lexington Utilities Commission shall be made in December of 1995 as provided by Section 1 of this act.

In the General Assembly read three times and ratified this the 17th day of July, 1995.

S.B. 229 **CHAPTER 443**

AN ACT TO REMOVE IMPEDIMENTS AND DISINCENTIVES TO DONATING CONSERVATION LAND OR PRESERVATION STRUCTURES OR SITES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 121-35(2) reads as rewritten:

"(2) 'Holder' means any public body of this State, including the State, any of its agencies, any city, county, district or other political subdivision or municipal or public corporation, or any instrumentality of any of the foregoing, any agency, department, or instrumentality of the United States, any nonprofit corporation or trust, or any private corporation or business entity whose purposes include any of those stated in (1) and (3), covering the purposes of preservation and conservation agreements."

Sec. 2. Any conservation agreement or preservation agreement, as defined in G.S. 121-35, that was entered into by an agency, department, or instrumentality of the United States on or after June 1, 1979, and prior to the date this act becomes effective is validated and confirmed as though the amendment to G.S. 121-35(2) made by Section 1 of this act had been in effect at the time of the agreement.

Sec. 3. G.S. 47B-3(8) reads as rewritten:

"(8) Rights of any person who has an easement or interest in the nature of an easement, whether recorded or unrecorded and whether possessory or nonpossessory, when such easement or interest in the nature of an easement is for ~~the purpose of;~~ any one of the following purposes:

a. Flowage, flooding or impounding of water, provided that the watercourse or body of water, which such easement or interest in the nature of an easement serves, continues to ~~exist; or~~ exist.

b. Placing and maintaining lines, pipes, cables, conduits or other appurtenances which are either aboveground, underground or on the surface and which are useful in the operation of any water, gas, natural gas, petroleum products, or electric generation, transmission or distribution system, or any sewage collection or disposal system, or any telephone, telegraph or other communications system, or any surface water drainage or disposal system whether or not the existence of the same is clearly observable by physical evidence of its use.

c. Conserving land or water areas pursuant to a conservation agreement or preserving a structure or site pursuant to a preservation agreement under Article 4 of Chapter 121 of the General Statutes."

Sec. 4. G.S. 105-277.4 is amended by adding a new subsection as follows:

"(e) Notwithstanding the provisions of subsection (c) of this section, if real property qualified for present use appraisal is conveyed by gift to a nonprofit organization and qualifies for exclusion from the tax base pursuant to G.S. 105-275(12) or G.S. 105-275(29) or is conveyed by gift to the State, a political subdivision of the State, or the United States, no deferred taxes shall be owed, and all present use value tax liens are extinguished."

Sec. 5. Section 4 of this act becomes effective January 1, 1995. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

S.B. 258

CHAPTER 444

AN ACT TO CLARIFY THE RECORD-KEEPING RESPONSIBILITIES OF CLERKS OF SUPERIOR COURT IN IV-D CHILD SUPPORT CASES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-13.9 reads as rewritten:

"*§ 50-13.9. Procedure to insure payment of child support.*

(a) Upon its own motion or upon motion of either party, the court may order at any time that support payments be made to the clerk of court for remittance to the party entitled to receive the payments. For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) shall apply.

(b) After entry of such an order by the court, ~~the clerk of court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.~~

~~In IV-D cases, when required by federal or state law or regulations or by court order,~~ the clerk of superior court shall transmit child support payments that are made to the clerk in IV-D cases to the Department of Human Resources for appropriate distribution. In all other cases, ~~whether~~

~~IV-D or non-IV-D,~~ the clerk shall transmit the payments to the custodial parent or other party entitled to receive them, unless a court order requires otherwise.

(b1) In a IV-D case:

(1) The designated child support enforcement agency shall have the sole responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate.

(2) The clerk of court shall maintain all official records in the case.

(3) The designated child support enforcement agency shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received.

(b2) In a non-IV-D case:

(1) The clerk of court shall have the responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate.

(2) The clerk of court shall maintain all official records in the case.

(3) The clerk of court shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received.

(c) ~~The~~ In a non-IV-D case, the parties affected by the order shall inform the clerk of court of any change of address or of other condition that may affect the administration of the order. In a IV-D case, the parties affected by the order shall inform the designated child support enforcement agency of any change of address or other condition that may affect the administration of the order. The court may provide in the order that a party failing to inform the court or, as appropriate, the designated child support enforcement agency, of a change of address within a reasonable period of time may be held in civil contempt.

(d) In a non-IV-D case, when an obligor fails to make a required payment of child support and is in arrears, the clerk of superior court shall mail by regular mail to the last known address of the obligor a notice of delinquency. The notice shall set out the amount of child support currently due and shall demand immediate payment of said amount. The notice shall also state that failure to make immediate payment will result in the issuance by the court of an enforcement order requiring the obligor to appear before a district court judge and show cause why the support obligation should not be enforced by income withholding, contempt of court, or other appropriate means. Failure to receive the delinquency notice shall not be a defense in any subsequent proceeding. Sending the notice of delinquency shall be in the discretion of the clerk if the clerk has, during the previous 12 months, sent a notice or notices of delinquency to the obligor for nonpayment, or if income withholding has been implemented against the obligor or the obligor

has been previously found in contempt for nonpayment under the same child support order.

If the arrearage is not paid in full within 21 days after the mailing of the delinquency notice, or without waiting the 21 days if the clerk has elected not to mail a delinquency notice for any of the reasons provided herein, the clerk shall cause an enforcement order to be issued and shall issue a notice of hearing before a district court judge. The enforcement order shall order the obligor to appear and show cause why he should not be subjected to income withholding or adjudged in contempt of court, or both, and shall order the obligor to bring to the hearing records and information relating to his employment and the amount and sources of his disposable income. The enforcement order shall state:

(1) That the obligor is under a court order to provide child support, the name of each child for whose benefit support is due, and information sufficient to identify the order;
(2) That the obligor is delinquent and the amount of overdue support;
(3) That the court may order income withholding if the obligor is delinquent in an amount equal to the support due for one month;
(4) That income withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10;
(5) That failure to bring to the hearing records and information relating to his employment and the amount and sources of his disposable income will be grounds for contempt;
(6) That if income withholding is not an available or appropriate remedy, the court may determine whether the obligor is in contempt or whether any other enforcement remedy is appropriate.

The enforcement order may be signed by the clerk or a district court judge, and shall be served on the obligor pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. The clerk shall also notify the party to whom support is owed of the pending hearing. The clerk may withdraw the order to the supporting party upon receipt of the delinquent payment. On motion of the person to whom support is owed, with the approval of the district court judge, if he finds it is in the best interest of the child, no enforcement order shall be issued.

When the matter comes before the court, the court shall proceed as in the case of a motion for income withholding under G.S. 110-136.5. If income withholding is not an available or adequate remedy, the court may proceed with contempt, imposition of a lien, or other available, appropriate enforcement remedies.

This subsection shall apply only to non-IV-D cases, except that the clerk shall issue an enforcement order in a IV-D case when requested to do so by an IV-D obligee.

(e) The clerk of court shall maintain and make available to the district court judge a list of attorneys who are willing to undertake representation, pursuant to this section, of persons to whom child support is owed. No attorney shall be placed on such list without his permission.

(f) At least seven days prior to an enforcement hearing as set forth in subsection (d), the clerk must notify the district court judge of all cases to

be heard for enforcement at the next term, and the judge shall appoint an attorney from the list described in subsection (e) to represent each party to whom support payments are owed if the judge deems it to be in the best interest of the child for whom support is being paid, unless:

(1) The attorney of record for the party to whom support payments are owed has notified the clerk of court that he will appear for said party; or

(2) The party to whom support payments are owed requests the judge not to appoint an attorney; or

(3) An attorney for the enforcement of child support obligations pursuant to Title IV, Part D, of the Social Security Act as amended is available.

The judge may order payment of reasonable attorney's fees as provided in G.S. 50-13.6.

(g) Nothing in this section shall preclude the independent initiation by a party of proceedings for civil contempt or for income withholding."

Sec. 2. This act becomes effective July 1, 1996.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

S.B. 388 **CHAPTER 445**

AN ACT TO AMEND THE PESTICIDE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-437(2) reads as rewritten:

"(2) To carry out a program of planning, environmental and biological monitoring, and of investigation into long-range needs and problems concerning pesticides. In order to encourage the cooperation of private property owners needed to implement the provisions of this subdivision, the Board may enter into agreements with private property owners to conduct sampling, testing, monitoring, and related activities on their property. Information obtained pursuant to these agreements shall not be disclosed in a manner that would permit the identification of an individual property owner unless the property owner has given permission to disclose the information."

Sec. 2. G.S. 143-442(e) reads as rewritten:

"(e) The Board is authorized and empowered to refuse to register, or to cancel the registration of any ~~of all~~ brands and grades of pesticides as herein provided, if the registrant fails or refuses to comply with the provisions of this Part, or any rules and regulations promulgated thereunder, or, upon satisfactory proof that the registrant or applicant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this Part, or any rules and regulations promulgated thereunder. The Board may require the manufacturer or distributor of any pesticide, for which registration has been refused, cancelled, suspended or voluntarily discontinued or which has been found adulterated or deficient in its active ingredient, to remove such pesticide from the marketplace."

Sec. 3. G.S. 143-443(b) is amended by adding the following new subdivisions:

"(6) For any person to assault, resist, impede, intimidate, or interfere with any State employee while that employee is engaged in the performance of his or her duties under this Article.

(7) For any person to apply, for compensation, a pesticide that has not been registered pursuant to G.S. 143-442."

Sec. 4. G.S. 143-448(c) reads as rewritten:

"(c) The license for a pesticide dealer may be renewed annually upon application to the Board, accompanied by a fee of ~~twenty-five dollars ($25.00)~~ thirty dollars ($30.00) for each license, on or before the first day of January of the calendar year for which the license is issued."

Sec. 5. G.S. 143-456(a) is amended by adding a new subdivision to read:

"(16) Failed to pay a civil penalty assessed under this Article within 30 days after the date it is assessed."

Sec. 6. G.S. 143-460(10) is repealed.

Sec. 7. G.S. 143-460(29) reads as rewritten:

"(29) 'Pesticide applicator' ~~includes~~ means any person who owns or ~~manages~~ operates a pesticide application business ~~which is engaged in the business of applying~~ or who provides, for compensation, a service that includes the application of pesticides upon the lands or properties of another; any public operator; any golf course operator; any seed treater; any person engaged in demonstration or research pest control; and any other person who ~~acts as a pesticide applicator~~ applies pesticides for compensation and is not exempt from this definition. It does not include:

a. Any person who uses or supervises the use of a pesticide (i) only for the purpose of producing an agricultural commodity on property owned or rented by him or his employer, or (ii) only (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person, or (iii) only for the purposes set forth in (i) and (ii) above.

b. Any person ~~regulated by~~ who applies pesticides for structural pest control, as defined in the North Carolina Structural Pest Control Law (G.S. Chapter 106, Article 4C).

c. Any person certified by the Water Treatment Facility Operators Board of Certification under Article 2 of Chapter 90A of the General Statutes or by the Wastewater Treatment Operators Plant Certification Commission under Article 3 of Chapter 90A of the General Statutes who applies pesticides labeled for the treatment of water or wastewater.

d. Any person who applies antimicrobial pesticides that are not classified for restricted use and are not being used for agricultural, horticultural, or forestry purposes.

e. Any person who applies a general use pesticide to the property of another as a volunteer, without compensation.

f. Any person who is employed by a licensed pesticide applicator."

Sec. 8. G.S. 143-465 is amended by adding the following new subsection:

"(d) No county, city, or other political subdivision of the State shall adopt or continue in effect any ordinance, rule, regulation, or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of pesticides in any area subject to regulation by the Board pursuant to this Article. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from exercising its planning and zoning authority under Article 19 of Chapter 160A of the General Statutes or Article 18 of Chapter 153A of the General Statutes, or from exercising its fire prevention or inspection authority."

Sec. 9. G.S. 143-466(a) reads as rewritten:

"(a) The Board shall require licensees to maintain records with respect to the sale and application of such pesticides as it may from time to time prescribe. Such relevant information as the Board may deem necessary may be specified by ~~regulation.~~ rule. ~~Such~~ The records shall be kept for a period of three years from the date of the application of the pesticide to which ~~such~~ the records refer, and shall be available for inspection and copying by the Board or its agents at its request."

Sec. 10. G.S. 143-469(b) reads as rewritten:

"(b) A civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Board against any person ~~who:~~

~~(1) Sells or offers for sale any unregistered pesticide in violation of G.S. 143-442;~~

~~(2) Uses a pesticide in a manner inconsistent with its labeling;~~

~~(3) Stores or disposes of a pesticide or pesticide container by means other than means prescribed on the labeling or regulations adopted pursuant to this Article;~~

~~(4) Makes false or fraudulent claims about the effect of any pesticide or method of application of a pesticide;~~

~~(5) Violates any stop sale, stop use, or removal order adopted under G.S. 143-447;~~

~~(6) Fails to provide names and addresses of recipients of pesticides which are the subject of stop sale, stop use, or removal orders when the person is the registrant of the pesticide or has sold or distributed the pesticide;~~

~~(7) Fails to make and keep records required by this Article, fails to make reports when required by this Article or refuses to make such records and reports available for audit or inspection by the Board or its agents;~~

~~(8) Falsifies all or part of any application for the registration of a pesticide or the issuance or renewal of any license under this Article;~~

~~(9) Makes false statements or provides false information in connection with any investigation conducted under this Article;~~

~~(10) Operates as a pesticide applicator, consultant or dealer without a license;~~

~~(11) Makes any restricted use pesticide available for use by any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee or an employee working under the direct supervision of such applicator or licensee.~~

~~(12) Distributes, sells or offers for sale any restricted use pesticide to any dealer who does not hold a valid North Carolina Pesticide Dealer License.~~

~~In determining the amount of any penalty, the Board may consider the degree and extent of harm caused by the violation and the cost of rectifying the damage caused by the violation.~~ who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article."

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

S.B. 404

CHAPTER 446

AN ACT TO MODIFY THE CRITERIA FOR SELECTION AND SENTENCING TO IMPACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1343.1 reads as rewritten:

"*§ 15A-1343.1. Criteria for selection and sentencing to IMPACT.*

The criteria for selecting and sentencing ~~youthful~~ offenders to the Intensive Motivational Program of Alternative Correctional Treatment as provided under G.S. 15A-1343(b1)(2A) shall be as follows:

(1) The offender must be between the ages of 16 ~~and 25~~; and 30;

(2) The offender must be convicted of a Class 1 misdemeanor or a felony.

(3) The offender must submit to a medical evaluation by a physician approved by his probation or parole officer and must be certified by the physician to be medically fit for program participation.

~~(4) The offender must not previously have served an active sentence in excess of 120 days for an offense not subject to Article 81B of this chapter or of 30 days for an offense subject to Article 81B of this Chapter.~~"

Sec. 2. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

S.B. 668

CHAPTER 447

AN ACT TO REMOVE THE SUNSET FROM THE STATUTE PERMITTING PRIVATE CONTRACT PARTICIPATION BY THE DEPARTMENT OF TRANSPORTATION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 860 of the 1987 Session Laws, as amended by Section 1 of Chapter 749 of the 1989 Session Laws, as further amended by Section 1 of Chapter 272 of the 1991 Session Laws, and as further amended by Section 2 of Chapter 183 of the 1993 Session Laws reads as rewritten:

"Sec. 2. This act is effective upon ~~ratification, and shall expire June 30, 1995.~~ ratification."

Sec. 2. G.S. 136-28.6 is amended by adding a new subsection to read:

"(i) Municipalities may participate financially in private engineering and construction contracts for projects pertaining to streets or highways which are on a mutually adopted thoroughfare plan for said municipality."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

S.B. 792 **CHAPTER 448**

AN ACT TO AMEND THE BAIL BOND FORFEITURE PROCEDURE PROVIDED BY ARTICLE 26 OF CHAPTER 15A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Subsections (d) and (e) of G.S. 15A-544 read as rewritten:

"(d) To facilitate the procedure under this section, the clerk in each county ~~must present a forfeiture roll at the first session of superior court commencing more than 60 days after the entry of any order of forfeiture in either the district or superior court,~~ shall prepare for both the district and superior court a forfeiture calendar once each month when court is in session. ~~The forfeiture roll must~~ The forfeiture calendar shall list the names of all principals ~~as to which forfeiture has been ordered in the county in the past three years~~ and sureties to whom forfeiture has been ordered more than 60 days previously in the county and as to which judgments of forfeiture against ~~obligors~~ the principal and surety have not been entered or, if entered, not yet satisfied by execution. ~~In addition, the~~ The forfeiture ~~roll must~~ calendar shall show the amount of the bond ordered forfeited in each ~~case and the names of all sureties liable on each bond,~~ case. In addition, the clerk shall place on the forfeiture calendar for hearing all written motions to strike an order of forfeiture filed since the previous forfeiture calendar. It shall be the duty of the district attorney to present the forfeiture calendar to the court, but the attorney for the county school board shall have the right to appear and be heard when the forfeiture calendar is presented. At the district attorney's discretion, the district attorney may appoint the county school board attorney as the district attorney's designee for the presentation of the forfeiture calendar.

(e) At any time within 90 days after entry of the judgment against a principal or his surety, or on the first day of the next session of court

commencing more than 90 days after the entry of the judgment, the court may direct that the judgment be remitted in whole or in part, upon such conditions as the court may impose, if it appears that justice requires the remission of part or all of the judgment. If the principal is incarcerated or served an order for arrest in North Carolina within 90 days of the entry of the judgment and the principal placed on a new bond or released by the court, then the forfeiture shall be stricken upon the payment of costs. ~~If the principal is incarcerated or served an order for arrest and the principal placed on a new bond or released by the court anytime between failure to appear and up to 90 days after the entry of judgment, then the bond shall be totally remitted upon the payment of costs.~~"

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

S.B. 864 **CHAPTER 449**

AN ACT TO REQUIRE DOMICILIARY CARE HOMES TO SUBMIT ANNUAL AUDITED REPORTS OF ACTUAL COSTS AND TO REQUIRE THE DEPARTMENT OF HUMAN RESOURCES TO ADOPT RULES TO ENSURE QUALITY OF CARE IN DOMICILIARY CARE HOMES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-3 is repealed.

Sec. 2. G.S. 131D-4 is repealed.

Sec. 3. Article 1 of Chapter 131D is amended by adding the following new sections to read:

"*§ 131D-4.1. Domiciliary care homes; legislative intent.*

The General Assembly finds and declares that the ability to exercise personal control over one's life is fundamental to human dignity and quality of life and that dependence on others for some assistance with daily life activities should not require surrendering personal control of informed decision making or risk taking in all areas of one's life.

The General Assembly intends to ensure that domiciliary care homes provide services that assist the residents in such a way as to assure quality of life and maximum flexibility in meeting individual needs and preserving individual autonomy.

"*§ 131D-4.2. Domiciliary care homes; family care homes; annual cost reports; exemptions; enforcement.*

(a) Except for family care homes, domiciliary care homes with a licensed capacity of seven to twenty beds, which are licensed pursuant to this Chapter, to Chapter 122C of the General Statutes, and to Chapter 131E of the General Statutes, shall submit audited reports of actual costs to the Department at least every two years in accordance with rules adopted by the Department under G.S. 143B-10. For years in which an audited report of actual costs is not required, an annual cost report shall be submitted to the Department in accordance with rules adopted by the Department under G.S. 143B-10.

(b) Except for family care homes, domiciliary care homes with a licensed capacity of twenty-one beds or more, which are licensed pursuant to this Chapter, to Chapter 122C of the General Statutes, and to Chapter 131E of the General Statutes, shall submit annual audited reports of actual costs to the Department of Human Resources, in accordance with rules adopted by the Department under G.S. 143B-10.

(c) Family care homes shall submit annual cost reports to the Department of Human Resources, in accordance with rules adopted by the Department under G.S. 143B-10.

(d) Facilities that do not receive State/County Special Assistance or Medicaid personal care are exempt from the reporting requirements of this section.

(e) The first audited cost report shall be for the period from January 1, 1995, through September 30, 1995, and shall be due March 1, 1996. Thereafter, the annual reporting period shall be October 1 through September 30, with the annual report due by the following March 1.

(f) The Department shall have the authority to conduct audits and review audits submitted pursuant to subsections (a), (b), and (c) above.

(g) The Department may take either or both of the following actions to enforce compliance by a facility with this section, or to punish noncompliance:

(1) Seek a court order to enforce compliance;

(2) Suspend or revoke the facility's license, subject to the provisions of Chapter 150B of the General Statutes.

(h) The report documentation shall be used to adjust the domiciliary care home rate annually, an adjustment that is in addition to the annual standard adjustment for inflation as determined by the Office of State Budget and Management. The Department of Human Resources shall adopt rules for the rate-setting methodology and audited cost reports in accordance with G.S. 143B-10.

"§ 131D-4.3. Domiciliary care home rules.

(a) Pursuant to G.S. 143B-153, the Social Services Commission shall adopt rules to ensure at a minimum, but shall not be limited to, the provision of the following by domiciliary care homes:

(1) Client assessment and independent case management;

(2) A minimum of 75 hours of training for personal care aides performing heavy care tasks and a minimum of 40 hours of training for all personal care aides. The training for aides providing heavy care tasks shall be comparable to State-approved Certified Nurse Aide I training. For those aides meeting the 40-hour requirement, at least 20 hours shall be classroom training to include at a minimum:

a. Basic nursing skills;

b. Personal care skills;

c. Cognitive, behavioral, and social care;

d. Basic restorative services; and

e. Residents' rights.

A minimum of 20 hours of training shall be provided for aides in family care homes that do not have heavy care residents. Persons

who either pass a competency examination developed by the Department of Human Resources, have been employed as personal care aides for a period of time as established by the Department, or meet minimum requirements of a combination of training, testing, and experience as established by the Department shall be exempt from the training requirements of this subdivision;

(3) Monitoring and supervision of residents; and

(4) Oversight and quality of care as stated in G.S. 131D-4.1.

(b) Rules to implement this section shall be adopted as emergency rules in accordance with Chapter 150B of the General Statutes. These rules shall be in effect no later than January 1, 1996.

(c) The Department may suspend or revoke a facility's license, subject to the provisions of Chapter 150B, to enforce compliance by a facility with this section or to punish noncompliance."

Sec. 4. G.S. 143B-153(3) reads as rewritten:

"(3) The Social Services Commission shall have the power and duty to establish and adopt standards:

a. For the inspection and licensing of maternity homes as provided by G.S. 131D-1;

b. For the inspection and licensing of domiciliary homes for aged or disabled persons as provided by G.S. 131D-2(b) and for personnel requirements of staff employed in domiciliary ~~homes. Any proposed personnel requirements that would impose additional costs on owners of domiciliary homes shall be reviewed by the Joint Legislative Commission on Governmental Operations before they are adopted;~~ homes;

c. For the inspection and licensing of child-care institutions as provided by G.S. 131D-10.5;

d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153A-220 and Article 2 of Chapter 131D of the General Statutes of the State of North Carolina;

e. Repealed by Session Laws 1981, c. 562, s. 7.

f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Chapter 131D of the General Statutes of the State of North Carolina."

Sec. 5. The Department shall make progress reports on the implementation of this act by October 1, 1995, and March 1, 1996, to the North Carolina Study Commission on Aging established pursuant to Article 21 of Chapter 120 of the General Statutes. Prior to June 30, 1999, the Department shall evaluate the effects of this act and shall report to the Joint Legislative Commission on Governmental Operations and the Study Commission on Aging on the feasibility of continuing the requirements established in this act.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

H.B. 6 **CHAPTER 450**

AN ACT TO GRANT ADDITIONAL MANAGEMENT FLEXIBILITY TO LOCAL BOARDS OF EDUCATION, TO ENSURE THAT LOCAL BOARDS OF EDUCATION ARE HELD ACCOUNTABLE FOR THE USE OF THAT FLEXIBILITY, TO ASSESS THE RELATIONSHIP BETWEEN EXPENDITURES FOR PUBLIC SCHOOLS AND STUDENT PERFORMANCE, AND TO MAKE CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

-----LOCAL MANAGEMEN FLEXIBILITY

Section 1. (a) Effective July 1, 1995, funding allotments in the Public School Fund are consolidated as follows to increase flexibility in the use of State funds:

	Existing Funding Allotments	**New Funding Allotments**
(1)	Superintendents; School Administrators; Finance Officers; Maintenance Supervisors; Child Nutrition Supervisors; Community Schools; Sports Medicine; Health Education; Categorical Central Office Administrators; Matching Benefits.	Central Office Administration.
(2)	Classroom Teachers - regular; Self-Contained Exceptional Children Teachers; Program Enhancement Teachers; Math, Science, and Computer Teachers; Matching Benefits.	Classroom Teachers.
(3)	Exceptional Children - State Aid and Related Services; Exceptional Children - Preschool 3 & 4; Group Homes; Developmental Day Care (3-20); Community Residential Center.	Exceptional Children.
(4)	Dropout Prevention/ Students at Risk/In-School Suspension; Summer School - Instruction and Remediation Support; Summer School - Transportation; Intervention/Prevention;	At-Risk Student Services/ Alternative Schools.

	Preschool Screening; Safe Schools; Alcohol and Drug Defense; Prevention/Student Assistance.	
(5)	Child Nutrition - Staff Development; Staff Development - Finance Officers; Staff Development - K-12.	Staff Development.
(6)	Clerical Assistants; Custodians; Duty-Free Period; Liability Insurance; Substitute Pay; Clerical Assistant - Textbook Commission; Technology Assistants; Matching Benefits.	Noninstructional Support Personnel.
(7)	Instructional Supplies; Instructional Equipment; Testing Support.	Classroom Materials/ Instructional Supplies/ Equipment.
(8)	Principals; Assistant Principals.	School Building Administration.
(9)	Instructional Support; Restricted Support Personnel.	Instructional Support Personnel.
(10)	Teacher Assistants; Self-Contained Teacher Assistants.	Teacher Assistants.
(11)	SIMS	Uniform Education Reporting System.

(b) The State Board of Education shall adopt formulas for computing the new allotments and may shift appropriate funds from existing funding allotments as is necessary to create these new allotments. The State Board shall establish a timeline to implement the new allotments so that they are fully implemented by the beginning of the 1996-97 school year. For the 1995-96 fiscal year, the State Board shall allocate Intervention/Prevention funds and Safe Schools funds to local school administrative units on a grant basis.

(c) The formula for the new funding allotment for Central Office Administration shall provide for a dollar allotment and not a position allotment. Furthermore, no central office administrators shall be paid from any other funding allotment, including funds for categorical programs.

(d) Funds allotted for the new funding allotment for At-Risk Student Services/Alternative Schools for the 1995-96 fiscal year shall remain available for expenditure until September 1, 1996; funds allotted for the 1996-97 fiscal year and subsequent fiscal years shall become available for

expenditure on July 1 of that fiscal year and shall remain available for expenditure until August 31 of the next fiscal year.

(e) The State Board of Education shall adopt policies to establish purposes for which consolidated funds within each new funding allotment may be used, beginning with the funds within the At-Risk Student Services/Alternative Schools allotment. These purposes shall include, but are not required to be limited to, the same purposes as were permitted under the existing funding allotment categories. If applicable, the purposes shall conform to appropriate federal requirements. The State Board also shall establish procedures for allocating funds that previously were distributed in the form of grants to selected local school administrative units.

(f) Notwithstanding the new funding allotments established in this section, local boards of education may use funds from the allotment for Vocational Education - Months of Employment for program support for vocational education, and may use funds from the allotment for Instructional Support Personnel for teacher positions to reduce class size at all grade levels.

No waivers shall be necessary for the use of these funds under this subsection.

(g) The State Board of Education shall develop a plan to enable local school improvement teams to take advantage of the increased flexibility granted under this act. This plan shall include a method to inform appropriate individuals in addition to central office administrators.

(h) The State Board of Education shall report on the formulas and timeline under subsection (b) of this section, on the policies and procedures established under subsection (e) of this section, and on the plan developed under subsection (g) of this section to the Joint Legislative Education Oversight Committee by April 15, 1996.

Sec. 2. Notwithstanding Section 19.17(1) of Chapter 769 of the 1993 Session Laws, the funds allocated in that section for school psychologists, social workers, and guidance counselors for kindergarten through the eighth grade in accordance with the Basic Education Program may be used in the same manner as permitted under the Instructional Support Personnel allotment.

-----FISCAL ACCOUNTABILITY

Sec. 3. The State Board of Education shall develop a plan for modifying or expanding the Uniform Education Reporting System to provide information on the use of funds at the unit and school level. The plan shall provide information that will enable the General Assembly to determine State, local, and federal expenditures for personnel at the unit and school level. The plan also shall determine the feasibility of tracking expenditures for textbooks, educational supplies and equipment, capital outlay, and other purposes. The goals of the plan shall be to provide: (i) clear, accurate, and standard reporting of unit and school personnel expenditures; (ii) information that is useful for policymakers and public reporting purposes; (iii) information that provides comparative costs and efficiency data at the unit and school level; (iv) a flexible database for answering a variety of questions regarding public school expenditures in North Carolina schools; and (v) an automated system of reporting expenditures that minimizes

workload and administration. The State Board of Education shall report to the Joint Legislative Education Oversight Committee by October 15, 1995, on the plan developed in this section and make recommendations on the feasibility and timing of implementing the plan on a statewide basis. The Joint Legislative Education Oversight Committee shall make any recommendations for legislation or funds necessary to implement the plan statewide to the 1996 Regular Session of the 1995 General Assembly.

-----STUDENT PERFORMANCE

Sec. 4. G.S. 115C-12 is amended by adding a new subdivision to read:

"(1a) To Submit a Budget Request to the Director of the Budget. -- The Board shall submit a budget request to the Director of the Budget in accordance with G.S. 143-6. In addition to the information requested by the Director of the Budget, the Board shall provide an analysis relating each of its requests for expansion funds to anticipated improvements in student performance."

-----CONFORMING STATUTORY CHANGES

Sec. 5. G.S. 115C-81(e)(3) reads as rewritten:

"(3) The development and administration of this program shall be the responsibility of each local school administrative unit in the State that ~~receives an allocation of State funds for a school health coordinator, a school health education coordinator who serves the local school administrative unit, the Department of Public Instruction, and a State School Health Education Advisory Committee.~~ uses State funds to implement this program."

Sec. 6. G.S. 115C-81(e)(4) reads as rewritten:

"(4) ~~Each existing local school administrative unit is eligible to develop and submit a plan for a comprehensive school health education program which shall meet all standards established by the State Board of Education, and to apply for funds to execute such plans.~~

~~The State Board of Education shall designate an impartial panel to review health education program plans submitted by local school administrative units. Based on the panel's evaluation of the plans, the State Board of Education shall allocate the State-funded school health coordinators. Where feasible, a school health coordinator shall serve more than one local school administrative unit.~~

Each person initially employed as a State-funded school health coordinator after June 30, 1987, shall have a degree in health education."

Sec. 7. G.S. 115C-81(e)(5) reads as rewritten:

"(5) The Department of Public Instruction shall supervise the development and operation of a statewide comprehensive school health education program including curriculum development, in-service training provision and promotion of collegiate training, learning material review, and assessment and evaluation of local

programs in the same manner as for other programs. ~~It is the intent of this legislation that a specific position or positions in the Department of Public Instruction shall be assigned responsibilities as set forth in this subsection.~~"

Sec. 8. G.S. 115C-206 reads as rewritten:

"*§ 115C-206. State Board of Education; duties; responsibilities.*

The Superintendent of Public Instruction shall prepare and present to the State Board of Education recommendations for general guidelines for encouraging increased community involvement in the public schools and use of public school facilities. ~~The Superintendent of Public Instruction shall consult with the interagency council in preparing the general guidelines.~~ These recommendations shall include, but shall not be limited to provisions for:

(1) The use of public school facilities by governmental, charitable or civic organizations for activities within the community.

(2) The utilization of the talents and abilities of volunteers within the community for the enhancement of public school programs including tutoring, counseling and cultural programs and projects.

(3) Increased communications between the staff and faculty of the public schools, other community institutions and agencies, and citizens in the community.

Based on the recommendations of the Superintendent of Public Instruction, the State Board of Education shall adopt appropriate policies and guidelines for encouraging increased community involvement in the public schools and use of the public school facilities.

~~The State Board of Education shall establish rules and regulations governing the submission and approval of programs prepared by local boards of education for encouraging increased community involvement in the public schools and use of the public school facilities.~~

~~The State Board of Education is authorized to allocate funds to the local boards of education for the employment of community schools coordinators and for other appropriate expenses upon approval of a program submitted by a local board of education and subject to the availability of funds. In the event that a local board of education already has sufficient personnel employed performing functions similar to those of a community schools coordinator, the State Board of Education may allocate funds to that local board of education for other purposes consistent with this Article. Funds allocated to a local board of education shall not exceed three fourths of the total budget approved in the community schools program submitted by a local board of education.~~"

Sec. 9. G.S. 115C-207 reads as rewritten:

"*§ 115C-207. Authority and responsibility of local boards of education.*

Every local board of education ~~which elects to apply for funding pursuant to~~ that uses State funds to implement programs under this Article shall:

(1) Develop programs and plans for increased community involvement in the public schools based upon policies and guidelines adopted by the State Board of Education.

(2) Develop programs and plans for increased community use of public school facilities based upon policies and guidelines adopted by the State Board of Education.

(3) Establish rules governing the implementation of such programs and plans in its public schools and submit these rules along with adopted programs and plans to the State Board of Education for approval by the State Board of Education.

Programs and plans developed by a local board of education ~~shall~~ may provide for the establishment of one or more community schools advisory councils for the public schools under the board's jurisdiction and for the employment of one or more community schools coordinators. The local board of education shall establish the terms and conditions of employment for the community schools coordinators.

Every local board of education ~~which elects to apply for funding pursuant to this Article shall have the authority to~~ using State funds to implement a community schools program under this Article may enter into agreements with other local boards of education, agencies and institutions for the joint development of plans and programs and the joint expenditure of ~~funds allocated by the State Board of Education. Local funds from each local board of education applying for funds for the community schools program must equal at least one fourth of the total budget for the community schools program of said local board of education.~~ these State funds."

Sec. 10. G.S. 115C-208 reads as rewritten:

"*§ 115C-208. Community schools advisory councils; duties; responsibilities; membership.*

Every ~~participating~~ local board of education ~~shall~~ that establishes a community schools program under this Article may establish one or more community schools advisory councils which may become involved in matters affecting the educational process in accordance with rules established by the local board of education and approved by the State Board of Education and further ~~shall~~ may consider ways of increasing community involvement in the public schools and utilization of public school facilities. Community schools advisory councils may assist local boards of education in the development and preparation of the plans and programs to achieve such goals, may assist in the implementation of such plans and programs and may provide such other assistance as may be requested by the local boards of education.

Community schools advisory councils ~~shall~~ may work with local school officials and personnel, parent-teacher organizations, and community groups and agencies in providing maximum opportunities for public schools to serve the communities, and ~~shall~~ may encourage the maximum use of volunteers in the public schools.

At least one half of the members of each community schools advisory council ~~shall~~ should be the parents of students in the particular public school system: Provided, that less than twenty-five percent (25%) of the pupils attending a particular school reside outside the immediate community of the school, at least one half of the members ~~shall~~ should be parents of students in the particular school for which the advisory council is established. Wherever possible the local board of education is encouraged to include at least one high school student. The size of the councils and the terms of

membership on the councils shall be determined by the local board of education in accordance with the State guidelines."

Sec. 11. G.S. 115C-209 reads as rewritten:

"§ *115C-209. Community schools coordinators.*

Every ~~participating~~ local board of education ~~shall~~ may employ one or more community schools coordinators and shall establish the terms and conditions of their employment. Community schools coordinators shall be responsible for:

(1) Providing support to the community schools advisory councils and public school officials.

(2) Fostering cooperation between the local board of education and appropriate community agencies.

(3) Encouraging maximum use of community volunteers in the public schools.

(4) Performing ~~such~~ any other duties as may be assigned by the local superintendent and the local board of education, consistent with the purposes of this Article."

Sec. 12. G.S. 115C-238.2(b) reads as rewritten:

"(b) Local school administrative units that participate in the Performance-based Accountability Program:

(1) Are exempt from State requirements to submit reports and plans, other than local school improvement plans, to the State Board of Education and the Department of Public Instruction. They are not exempt from federal requirements to submit reports and plans to the Department.

(2) Are subject to the performance standards but not the opportunity standards or the staffing ratios of the State Accreditation Program. The performance standards in the State Accreditation Program, modified to reflect the results of end-of-course and end-of-grade tests, may serve as the basis for developing the student performance indicators adopted by the State Board of Education pursuant to G.S. 115C-238.1.

(3) May receive funds for differentiated pay for certain State-paid employees, in accordance with G.S. 115C-238.4, if they elect to participate in a differentiated pay plan.

(4) May be allowed increased flexibility in the expenditure of State funds, in accordance with ~~G.S. 115C-238.5.~~ G.S. 115C-238.6.

(5) May be granted waivers of certain State laws, regulations, and policies that inhibit their ability to reach local accountability goals, in accordance with G.S. 115C-238.6(a).

(5a) May use State funds allocated for teacher assistants to reduce class size or the student-teacher ratio in kindergarten through third grade, in accordance with a local school improvement plan so long as the affected teacher assistant positions are not filled when the plan is amended or adopted by the building-level staff entitled to vote on the building-level plan or the affected teacher assistant positions are not expected to be filled on the date the plan is to be implemented. Any State funds appropriated for teacher assistants that were converted to certificated teachers

before July 1, 1995, in accordance with Section 1 of Chapter 986 of the 1991 Session Laws, as rewritten by Chapter 103 of the 1993 Session Laws, may continue to be used for certificated teachers.

(5b) In accordance with a local school improvement plan, may use (i) funds from the funding allotment for Classroom Materials/Instructional Supplies/Equipment for the purchase of textbooks, (ii) funds from the funding allotment for Textbooks for the purchase of instructional supplies, instructional equipment, or other classroom materials, and (iii) funds from the allotment for Noninstructional Support Personnel for teacher positions to reduce class size in kindergarten through third grade.

(6) Shall continue to use the Teacher Performance Appraisal Instrument (TPAI) for evaluating beginning teachers during the first three years of their employment; they may, however, develop other evaluation approaches for teachers who have attained career status.

The Department of Public Instruction shall provide technical assistance, including the provision of model evaluation processes and instruments, to local school administrative units that elect to develop dual personnel evaluation processes. A dual personnel evaluation process includes (i) an evaluation designed to provide information to guide teachers in their professional growth and development, and (ii) an evaluation to provide information to make personnel decisions pertaining to hiring, termination, promotion, and reassignment."

Sec. 13. G.S. 115C-238.3(b1) reads as rewritten:

"(b1) Development by each school of strategies for attaining local school and student performance goals. -- The principal of each school, representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building, and parents of children enrolled in the school shall constitute a school improvement team to develop a building-level plan to address school and student performance goals appropriate to that school from those established by the local board of education. Parents serving on school improvement teams shall reflect the racial and socioeconomic composition of the students enrolled in that school and shall not be members of the building-level staff. Parental involvement is a critical component of school success and positive student outcomes; therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school and student performance goals at the building level. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation. The strategies for attaining local school and student performance goals shall include a plan for the use of staff development funds that may be made available to the school by the local board of education to implement the building-level plan. ~~These~~ The strategies may include a decision to use State funds allocated for teacher assistants to reduce class size or the student-teacher ratio in kindergarten through the third grade in accordance with G.S. 115C-238.2(b)(5a) or to

use State funds in accordance with G.S. 115C-238.2(b)(5b). The strategies may also include requests for waivers of State laws, regulations, or policies for that school. A request for a waiver shall (i) identify the State laws, regulations, or policies that inhibit the local unit's ability to reach its local accountability goals, (ii) set out with specificity the circumstances under which the waiver may be used, and (iii) explain how a waiver of those laws, regulations, or policies will permit the local unit to reach its local goals.

Support among affected staff members is essential to successful implementation of a building-level plan to address school and student performance goals appropriate to a school; therefore, the principal of the school shall present the proposed building-level plan to all of the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for their review and vote. The vote shall be by secret ballot. The principal may submit the building-level plan to the local board of education for inclusion in the systemwide plan only if the proposed building-level plan has the approval of a majority of the staff who voted on the plan.

The local board of education shall accept or reject the building-level plan. The local board shall not make any substantive changes in any building-level plan that it accepts; the local board shall set out any building-level plan that it accepts in the systemwide plan. If the local board rejects a building-level plan, the local board shall state with specificity its reasons for rejecting the plan; the school improvement team may then prepare another plan, present it to the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for a vote, and submit it to the local board for inclusion in the systemwide plan. If no building-level plan is accepted for a school before March 15 of the fiscal year preceding the fiscal year in which participation is sought, the local board may develop a plan for the school for inclusion in the systemwide plan; the General Assembly urges the local board to utilize the proposed building-level plan to the maximum extent possible when developing such a plan."

Sec. 14. G.S. 115C-238.5 is repealed.

Sec. 15. G.S. 115C-238.6(a) reads as rewritten:

"(a) Prior to June 30 each year, the State Superintendent shall review local school improvement plans submitted by the local school administrative units in accordance with policies and standards adopted by the State Board of Education and shall recommend to the State Board of Education whether the plan should be approved. If the State Board of Education approves the plan for a local school administrative unit, that unit shall participate in the Program for the next fiscal year.

If a local plan contains a request for a waiver of State laws, regulations, or policies, in accordance with G.S. 115C-238.3(b1) or (b2), the State Superintendent shall consider and recommend to the State Board of Education whether and to what extent the identified laws, regulations, or policies should be waived. If the State Board of Education deems it necessary to do so to enable a local unit to reach its local accountability goals, the State Board may grant waivers of:

(1) State laws pertaining to class size, teacher certification, ~~assignment of teacher assistants,~~ the use of State-adopted textbooks, and the purposes for which State funds for the public schools may be used;

(2) All State regulations and policies, except those pertaining to public school State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-325, health and safety codes, compulsory school attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System.

The State Board shall act promptly on requests for waivers under this section.

(a1) Notwithstanding subsection (a) of this section, the following limitations apply to the granting of waivers:

(1) The provisions of G.S. 115C-12(16)b. regarding the placement of State-allotted office support personnel, teacher assistants, and custodial personnel on the salary schedule adopted by the State Board shall not be waived.

(2) Except for waivers requested by the local board in accordance with G.S. 115C-238.3(b2) for central office staff, waivers shall be granted only for the specific schools for which they are requested in building-level plans and shall be used only under the specific circumstances for which they are requested.

(3) The State Board shall not permit funds under any funding allotment category other than Central Office Administration to be used for central office administrators.

(4) The State Board shall not permit funds under the Classroom Teachers allotment category to be used for any additional purpose other than for teachers of exceptional children, for teachers of at-risk students, and for authorized purposes under the Textbooks allotment category and the Classroom Materials/Instructional Supplies/Equipment allotment category.

(5) The State Board shall not grant waivers to permit funds under the Teacher Assistant allotment category to be used for any purpose other than for personnel (i) to serve students only in kindergarten through third grade, or (ii) to serve students primarily in kindergarten through third grade when the personnel are assigned to an elementary school to serve the whole school.

(a2) The State Board of Education shall, on a regular basis, review all waivers it has granted to determine whether any rules should be repealed or whether it should recommend to the General Assembly the repeal of any laws.

(a3) Local boards of education shall provide maximum flexibility in the use of funds to individual schools to enable them to accomplish their individual schools' goals."

Sec. 16. Effective June 30, 1996, Part 8 of Article 16 of Chapter 115C of the General Statutes is repealed.

Sec. 17. G.S. 115C-272(b)(1) reads as rewritten:

"(1) ~~Salary payments to superintendents shall be made monthly on the basis of each calendar month of service.~~ Each local board of education shall establish a set date on which monthly salary payments to superintendents shall be made. This set pay date may differ from the end of the calendar month of service. Superintendents shall only be paid for the days employed as of the set pay date. Payment for a full month when days employed are less than a full month is prohibited as this constitutes prepayment. Included within their term of employment shall be annual vacation leave at the same rate provided for State employees. Included within the 12 months' employment each local board of education shall designate the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees."

Sec. 18. G.S. 115C-285(a)(1) reads as rewritten:

"(1) Classified principals and State-allotted supervisors shall be employed for a term of 12 calendar months. ~~Salary payments to classified principals and State-allotted supervisors shall be made monthly at the end of each calendar month of service.~~ Each local board of education shall establish a set date on which monthly salary payments to classified principals and State-allotted supervisors shall be made. This set pay date may differ from the end of the calendar month of service. Classified principals and State-allotted supervisors shall only be paid for the days employed as of the set pay date. Payment for a full month when days employed are less than a full month is prohibited as this constitutes prepayment. They shall earn annual vacation leave at the same rate provided for State employees. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at the time agreed upon by the employee and his immediate supervisor. They shall be provided by the board the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees."

Sec. 19. G.S. 115C-302(a)(1) reads as rewritten:

"(1) Academic Teachers. -- Regular state-allotted teachers shall be employed for a period of 10 calendar months. ~~Salary payments to regular state-allotted teachers shall be made monthly at the end of each calendar month of service: Provided, that teachers~~ Each local board of education shall establish a set date on which monthly salary payments to regular State-allotted teachers shall be made. This set pay date may differ from the end of the calendar month of service. Teachers shall only be paid for the days employed as of the set pay date. Payment for a full month when days employed are less than a full month is prohibited as this constitutes prepayment. Teachers employed for a period of 10 calendar months in year-round schools shall be paid in 12 equal

~~installments: Provided further, that any~~ installments. Any individual teacher who is not employed in a year-round school may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. Such request shall be filed in the local school administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said local school administrative unit; nor shall such payment apply to any teacher who is employed for a period of less than 10 months. Included within the 10 calendar months employment shall be annual vacation leave at the same rate provided for State employees, computed at one twelfth (1/12) of the annual rate for State employees for each calendar month of employment; which shall be provided by each local board of education at a time when students are not scheduled to be in regular attendance. However, vacation leave for instructional personnel who do not require a substitute shall not be restricted to days that students are not in attendance. Included within the 10 calendar months employment each local board of education shall designate the same or an equivalent number of legal holidays occurring within the period of employment for academic teachers as those designated by the State Personnel Commission for State employees; on a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, a teacher may elect not to report due to hazardous travel conditions and to take an annual vacation day or to make up the day at a time agreed upon by the employee and the employee's immediate supervisor or principal. Within policy adopted by the State Board of Education, each local board of education shall develop rules ~~and regulations~~ designating what additional portion of the 10 calendar months not devoted to classroom teaching, holidays, or annual leave shall apply to service rendered before the opening of the school term, during the school term, and after the school term and to fix and regulate the duties of state-allotted teachers during said period, but in no event shall the total number of workdays exceed 200 days. Local boards of education shall consult with the employed public school personnel in the development of the 10-calendar-months schedule."

Sec. 20. G.S. 115C-302(a)(2) reads as rewritten:

"(2) Vocational and Technical Education Teachers. -- State-allotted months of employment to local boards of education as provided by the State Board of Education shall be used for the employment of teachers of vocational and technical education for a term of employment as determined by the local boards of education. ~~Salary payments to these vocational and technical education teachers shall be made monthly at the end of each calendar month of service: Provided, that local~~ Each local board of

education shall establish a set date on which monthly salary payments to these vocational and technical education teachers shall be made. This set pay date may differ from the end of the calendar month of service. These teachers shall only be paid for the days employed as of the set pay date. Payment for a full month when days employed are less than a full month is prohibited as this constitutes prepayment. Local boards shall not reduce the term of employment for any vocational agriculture teacher personnel position that was 12 calendar months for the 1982-83 school year for any school year ~~thereafter: Provided further, that teachers~~ thereafter. Teachers employed for a term of 10 calendar months in year-round schools shall be paid in 12 equal ~~installments: Provided further, that any~~ installments. Any individual teacher employed for a term of 10 calendar months who is not employed in a year-round school may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. Such request shall be filed in the administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said administrative unit. Included within their term of employment shall be the same rate of annual vacation leave and legal holidays provided under the same conditions as set out in subdivision (1) above, but in no event shall the total workdays for a 10-month employee exceed 200 days in a 10-month schedule and the workweek shall constitute five days for all vocational and technical teachers regardless of the employment period.

Vocational and technical education teachers who are employed for 11 or 12 months may, with prior approval of the principal, work on annual leave days designated in the school calendar and take those annual leave days during the 11th or 12th month of employment.

No deductions shall be made from salaries of teachers of vocational agriculture and home economics whose salaries are paid in part from State and federal vocational funds while in attendance upon community, county and State meetings called for the specific purpose of promoting the agricultural interests of North Carolina, when such attendance is approved by the superintendent of the administrative unit and the State Director of Vocational and Technical Education."

Sec. 21. G.S. 115C-316(a)(1) reads as rewritten:

"(1) Employees Other than Superintendents, Supervisors and Classified Principals on an Annual Basis. -- ~~Salary payments to employees other than superintendents, supervisors, and classified principals employed on an annual basis shall be made monthly at the end of each calendar month of service.~~ Each local board of education shall establish a set date on which monthly salary payments to employees other than superintendents, supervisors,

and classified principals employed on an annual basis, shall be made. This set pay date may differ from the end of the calendar month of service. These employees shall only be paid for the days employed as of the set pay date. Payment for a full month when days employed are less than a full month is prohibited as this constitutes prepayment. Included within their term of employment shall be annual vacation leave at the same rate provided for State employees, computed at one-twelfth (1/12) of the annual rate for state employees for each calendar month of employment. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. Included within their term of employment each local board of education shall designate the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees."

Sec. 22. G.S. 115C-318 reads as rewritten:

"§ *115C-318. Liability insurance for nonteaching public school personnel.*

The State Board of Education shall provide funds for liability insurance for nonteaching public school personnel to the extent that such personnel's salaries are funded by the State. The insurance shall cover claims made for injury liability and property damage liability on account of an act done or an omission made in the course of the employee's duties. As provided by law or the rules and policies of the State Board of Education or the local school administrative unit, the State Board of Education shall comply with the State's laws in securing the insurance and shall provide it at the earliest possible date for the 1982-83 school year. ~~Funds for this purpose shall be allocated from the State's Contingency and Emergency Fund.~~ Nothing in this section shall prevent the State Board from furnishing the same liability insurance protection for nonteaching public school personnel not supported by State funds, provided that the cost of the protection shall be funded from the same source that supports the salaries of these employees."

Sec. 23. Effective June 30, 1996, G.S. 115C-418 is repealed.

Sec. 24. Substitute teachers who hold teacher certificates shall be paid at a rate of fifty-seven dollars ($57.00) per day. Substitute teachers who do not hold teacher certificates but have completed effective teacher training shall be paid at a rate of fifty dollars ($50.00) per day. Substitute teachers who do not hold teacher certificates and have not completed effective teacher training shall be paid at a rate of forty dollars ($40.00) per day. Deductions in salaries for teachers on leave who require a deduction in salary for substitute pay shall be at a standard rate of fifty dollars ($50.00) per day.

Sec. 25. (a) Notwithstanding G.S. 115C-238.2(b)(5a), the State Board of Education shall authorize pilot projects in the Mecklenburg County School Administrative Unit and in the Burke County School Administrative Unit so that the boards of education in those units may use State funds from the allotment for Teacher Assistants for certificated teachers in order to

reduce class size or the student-teacher ratio in kindergarten through third grade, in accordance with local school improvement plans developed under G.S. 115C-238.3. No waivers from the State Board of Education are required for this use of funds.

(b) The State Board of Education shall evaluate programs initiated by local school administrative units using teacher assistant funds to reduce class size or the student-teacher ratio in kindergarten through third grade. The Board shall make an appropriate evaluation of the positions affected, the effect on student achievement, and any other factors the Board considers appropriate. The Board shall report the results of the evaluation to the Joint Legislative Education Oversight Committee on or before October 1, 1996, and annually thereafter through October 1, 1999.

-----EFFECTIVE DATE

Sec. 26. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

H.B. 360 **CHAPTER 451**

AN ACT TO EXEMPT RAILROADS FROM PAYMENT OF SALES TAX ON DIESEL FUEL USED BY LOCOMOTIVES AND RAILROAD CARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(11a) Sales of diesel fuel to railroad companies for use in rolling stock other than motor vehicles. The definitions in G.S. 105-333 apply in this subdivision."

Sec. 2. This act is effective on the first day of the second month following its ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

H.B. 390 **CHAPTER 452**

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF A CAPITAL IMPROVEMENTS PROJECT AT APPALACHIAN STATE UNIVERSITY.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is to authorize the construction of a capital improvements project at Appalachian State University and to authorize the financing of the project from self-liquidating indebtedness, or other funds, but not including funds appropriated from the General Fund of the State.

Sec. 2. The capital improvements project authorized to be constructed and financed as provided in Section 1 of this act is as follows:

1. Appalachian State University
   a. Replacement of Artificial Surfaces
      in Kidd Brewer Stadium $1,140,000.

Sec. 3. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the scope of or a change in the method of funding the project authorized by this act. In making a determination of whether to authorize a change in scope or funding, the Director of the Budget may consult with the Advisory Budget Commission. In no event may appropriations from the General Fund be used for a project authorized by this act.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

H.B. 807 **CHAPTER 453**

AN ACT TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE CRIMINAL RECORD CHECKS TO DOMICILIARY CARE FACILITIES, HOME CARE AGENCIES, HOSPICES, LICENSED CHILD PLACING AGENCIES, RESIDENTIAL CHILD CARE FACILITIES, AND OTHER PROVIDERS OF TREATMENT FOR OR SERVICES TO CHILDREN, THE ELDERLY, AND THE SICK AND DISABLED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 114-19.3 reads as rewritten:

"§ *114-19.3. Criminal record checks of ~~personnel of hospitals, nursing homes, and area mental health, developmental disabilities, and substance abuse authorities and their contract agencies.~~ providers of treatment for or services to children, the elderly, mental health patients, the sick, and the disabled.*

~~The Department of Justice may provide a criminal record check to a hospital or nursing home licensed under Chapter 131E of the General Statutes and to a hospital or an area mental health, developmental disabilities, and substance abuse authority licensed under Chapter 122C of the General Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of Chapter 122C of the General Statutes, of an individual who is employed by the hospital, nursing home, area authority, or contract agency or of an individual who has applied for employment with the hospital, nursing home, area authority, or contract agency if the employee or applicant consents to the record check. The information shall be kept confidential by the hospital, nursing home, area authority, or contract agency that received the information. Upon the disclosure of confidential information under this section by a hospital, nursing home, area authority, or contract agency, the Department may refuse to provide further criminal record checks to the hospital, nursing home, area authority, or contract agency. The Department shall charge a fee of ten dollars ($10.00) for conducting a criminal record check under this section.~~

(a) The Department of Justice may provide a criminal record check to the employer of an individual who is employed by or who has applied for employment with the following:

(1) Hospitals licensed under Chapter 131E of the General Statutes;

(2) Nursing homes licensed under Chapter 131E of the General Statutes;

(3) Domiciliary care facilities licensed under Chapter 131E of the General Statutes;

(4) Home care agencies or hospices licensed under Chapter 131E of the General Statutes;

(5) Child placing agencies licensed under Chapter 131D of the General Statutes;

(6) Residential child care facilities licensed under Chapter 131D of the General Statutes;

(7) Hospitals licensed under Chapter 122C of the General Statutes;

(8) Area mental health, developmental disabilities, and substance abuse authorities licensed under Chapter 122C of the General Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of Chapter 122C of the General Statutes;

(9) Licensed child day care facilities and registered and nonregistered child day care homes, regulated by the State; and

(10) Any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to children, the sick, the disabled, or the elderly.

(b) A criminal record check shall be provided only if the employee or applicant consents to the record check. The information shall be kept confidential by the employer that receives the information. Upon the disclosure of confidential information under this section by the employer, the Department may refuse to provide further criminal record checks to that employer.

(c) The Department of Justice, at the request of an agency, facility, organization, or corporation listed in subsection (a) of this section, may provide a criminal record check of a volunteer who provides direct care on behalf of the organization or corporation if the volunteer consents to the record check. The information shall be kept confidential and upon the disclosure of confidential information under this section by the agency, facility, corporation, or organization, the Department may refuse to provide further criminal record checks to that agency, facility, corporation, or organization.

(d) The Department of Justice, at the request of a child placing agency licensed under Chapter 131D of the General Statutes or a local department of social services, may provide a criminal record check of a prospective foster care or adoptive parent if the prospective parent consents to the record check. The information shall be kept confidential and upon the disclosure of confidential information under this section by the agency or department, the Department may refuse to provide further criminal record checks to that agency or department.

(e) The Department may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee may not exceed fourteen dollars ($14.00)."

Sec. 2. This act becomes effective October 1, 1995, and applies to checks made on or after that date.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

S.B. 237 **CHAPTER 454**

AN ACT TO CLARIFY THE USE VALUE TAX LAW, TO UPDATE THE LAW TO CONFORM TO MODERN FAMILY PROPERTY TRANSACTIONS, AND TO EXPAND THE CATEGORY OF PERSONS WHO MAY QUALIFY FOR USE VALUE PROPERTY TRANSFERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-277.2 reads as rewritten:

"§ *105-277.2. Agricultural, ~~horticultural~~ horticultural, and forestland -- Definitions.*

~~For the purposes of G.S. 105-277.3 through G.S. 105-277.7 the following definitions shall apply:~~ The following definitions apply in G.S. 105-277.3 through G.S. 105-277.7:

(1) ~~'Agricultural land' means land~~ Agricultural land. -- Land that is a part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program. Agricultural land includes woodland and wasteland that is a part of the farm unit, but the woodland and wasteland included in the unit shall be appraised under the use-value schedules as woodland or wasteland. A farm unit may consist of more than one tract of agricultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(1), and each tract must be under a sound management program.

(1a) Business entity. -- A corporation, a general partnership, a limited partnership, or a limited liability company.

(2) ~~'Forestland' means land~~ Forestland. -- Land that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program. Forestland includes wasteland that is a part of the forest unit, but the wasteland included in the unit shall be appraised under the use-value schedules as wasteland. A forest unit may consist of more than one tract of forestland, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(3), and each tract must be under a sound management program.

(3) ~~'Horticultural land' means land~~ Horticultural land. -- Land that is a part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program.

Horticultural land includes woodland and wasteland that is a part of the horticultural unit, but the woodland and wasteland included in the unit shall be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(2), and each tract must be under a sound management program.

(4) ~~'Individually owned' means owned by:~~ Individually owned. -- Owned by one of the following:

a. A natural ~~person; or~~ person. For the purpose of this section, a natural person who is an income beneficiary of a trust that owns land may elect to treat the person's beneficial share of the land as owned by that person. If the person's beneficial interest is not an identifiable share of land but can be established as a proportional interest in the trust income, the person's beneficial share of land is a percentage of the land owned by the trust that corresponds to the beneficiary's proportional interest in the trust income. For the purpose of this section, a natural person who is a member of a business entity that owns land may elect to treat the person's share of the land as owned by that person. The person's share is a percentage of the land owned by the business entity that corresponds to the person's percentage of ownership in the entity.

b. A ~~corporation~~ business entity having as its principal business one of the activities described in subdivisions (1), (2), and (3) and whose ~~shareholders~~ members are all ~~natural persons~~ either a natural person actively engaged in the business of the ~~corporation~~ entity or a relative of a ~~shareholder~~ member who is actively engaged in the business of the ~~corporation.~~ entity.

c. A trust that was created by a natural person who transferred the land to the trust and each of whose beneficiaries who is currently entitled to receive income or principal meets one of the following conditions:
   1. Is the creator of the trust or the creator's relative.
   2. Is a second trust whose beneficiaries who are currently entitled to receive income or principal are all either the creator of the first trust or the creator's relatives.

d. A testamentary trust that meets all of the following conditions:
   1. It was created by a natural person who transferred to the trust land that qualified in that person's hands for classification under G.S. 105-277.3.
   2. At the time of the creator's death, the creator had no relatives as defined in this section as of the date of death.
   3. The trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes as defined in G.S. 105-278.3(d).

(4a) Member. -- A shareholder of a corporation, a partner of a general or limited partnership, or a member of a limited liability company.

(5) ~~'Present-use value' means the~~ Present-use value. -- The value of land in its current use as agricultural land, horticultural land, or forestland, based solely on its ability to produce income, using a rate of nine percent (9%) to capitalize the expected net income of the property and assuming an average level of management.

(5a) ~~'Relative' means:~~ Relative. -- Any of the following:

a. ~~Spouse;~~ A spouse or the spouse's lineal ancestor or descendant.

b. A lineal ~~ancestor;~~ ancestor or a lineal descendant.

c. ~~A lineal descendant;~~ A brother or sister, or the lineal descendant of a brother or sister. For the purposes of this sub-subdivision, the term brother or sister includes stepbrother or stepsister.

d. ~~A brother or sister, including a stepbrother or stepsister;~~ An aunt or an uncle.

e. ~~An adopted or adoptive child, parent, grandchild, or grandparent; or~~

f. ~~A~~ A spouse of a person listed in paragraphs ~~b. through e.~~ a. through d.

For the purpose of this subdivision, an adoptive or adopted relative is a relative and the term 'spouse' includes a surviving spouse.

(6) ~~'Sound management program' means a~~ Sound management program. -- A program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement."

Sec. 2. G.S. 105-277.3 reads as rewritten:

"§ *105-277.3. Agricultural, ~~horticultural~~ horticultural, and forestland -- Classifications.*

(a) The following classes of property are hereby designated special classes of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution and shall be appraised, assessed and taxed as hereinafter provided:

(1) Individually owned agricultural land consisting of one or more tracts, one of which consists of at least 10 acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

(2) Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual

production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have either:

a. Been used to produce evergreens intended for use as Christmas trees and met the qualifying or gross income requirements established by the Department of Revenue for the land; or

b. Produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products.

(3) Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit.

(b) In order to come within a classification described in subdivision (a)(1), (2) or (3), above, the property must, if owned by natural persons, ~~also:~~ also satisfy one of the following conditions:

(1) ~~Be~~ It is the owner's place of ~~residence; or~~ residence.

(2) ~~Have~~ It has been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.

(3) At the time of transfer to the current owner, it qualified for classification in the hands of a business entity or trust which transferred the property to the current owner who was a member of the business entity or a beneficiary of the trust, as appropriate.

If owned by a ~~corporation,~~ business entity or trust, the property must have been owned by the ~~corporation~~ business entity or trust or by one or more of its ~~principal shareholders as defined in G.S. 105-277.2(4)b~~ members, or by one or more of its creators in the case of a trust, for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed. Notwithstanding the provisions of G.S. 105-277.2(4)b, ~~above, a corporation~~ a business entity qualifying for a classification described in G.S. 105-277.3 shall not lose the benefit of the classification by reason of the death of one of ~~the principal shareholders provided~~ its members if the decedent's ownership passes to and remains in a relative of the ~~decedent.~~

~~(c) In addition, property may come within one of the classifications described in subsection (a) above, if~~ decedent.

Property loses its eligibility for the classifications described in subsection (a) of this section if ownership of the property passes to anyone other than a relative of the owner or passes to or from a business entity or trust from or to anyone other than its members or its creators or beneficiaries, respectively, except that property does not lose its eligibility if both of the following conditions are met: (i) it was appraised at its present use value or was eligible for appraisal at its present use value pursuant to that subsection at the time title to the property passed to the present owner, and (ii) at the

time title to the property passed to the present ~~owner he~~ owner, the owner owned other property classified under subsection (a). ~~Classification pursuant to this subsection shall~~ The fact that property may retain its eligibility because the preceding two conditions were met does not affect any liability for deferred taxes under G.S. 105-277.4(c) if ~~such~~ those taxes were otherwise due at the time title passed to the present owner.

(d) Enrollment in the federal Conservation Reserve Program authorized by Title XII of the Food Security Act of 1985 (Pub. L. 99-198), as amended, shall not preclude eligibility of land for present use value treatment solely on the grounds that the land is no longer in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program shall be assessed as agricultural land if it is planted in vegetation other than trees, or as forest land if it is planted in trees."

Sec. 3. G.S. 105-277.4(c) reads as rewritten:

"(c) Property meeting the conditions ~~herein set forth~~ for classification under G.S. 105-277.3 shall be taxed on the basis of the value of the property for its present use. The difference between the taxes due on the present-use basis and the taxes which would have been payable in the absence of this classification, together with any interest, penalties or costs that may accrue thereon, shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the records of the taxing unit or units as deferred taxes, but shall not be payable, unless and until ~~(i) the owner conveys the property to anyone other than a relative of the owner, or (ii) ownership of the property passes to anyone other than a relative by will or intestacy, or (iii) ownership of the property passes to a corporation as defined in G.S. 105-277.2(4)b from anyone other than its principal shareholders or from such a corporation to anyone other than its principal shareholders, or (iv)~~ the property loses its eligibility for the benefit of this ~~classification for some other reason.~~ classification. The tax for the fiscal year that opens in the calendar year in which a disqualification occurs shall be computed as if the property had not been classified for that year, and taxes for the preceding three fiscal years which have been deferred as provided herein, shall immediately be payable, together with interest thereon as provided in G.S. 105-360 for unpaid taxes which shall accrue on the deferred taxes due herein as if they had been payable on the dates on which they originally became due. If only a part of the qualifying tract of land loses its eligibility, a determination shall be made of the amount of deferred taxes applicable to that part and that amount shall become payable with interest as provided above. Upon the payment of any taxes deferred in accordance with this section for the three years immediately preceding a disqualification, all liens arising under this subsection shall be extinguished."

Sec. 4. This act becomes effective January 1, 1995. Notwithstanding the provisions of G.S. 105-277.4(a), an application for the benefit provided in this act for the 1995-96 tax year shall be considered timely if it is filed on or before September 1, 1995.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

H.B. 65 **CHAPTER 455**

AN ACT TO ALLOW THE DISPLAY OF THE UNITED STATES AND NORTH CAROLINA FLAGS IN PUBLIC SCHOOL CLASSROOMS AND TO ENCOURAGE THE RECITAL OF THE PLEDGE OF ALLEGIANCE IN THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-47 is amended by adding a new subdivision to read:

"(29a) To Encourage the Display of the United States and North Carolina Flags, and to Encourage the Recitation of the Pledge or Oath of Allegiance. -- Local boards of education are encouraged to adopt policies to (i) provide for the display of the United States and North Carolina flags in each classroom, (ii) provide the opportunity for students to recite the Pledge or Oath of Allegiance on a regular basis, and (iii) provide age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom."

Sec. 2. This act is effective upon ratification. Section 1 of this act shall be fully implemented no later than January 1, 1996.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

H.B. 718 **CHAPTER 456**

AN ACT TO ESTABLISH A NORTH CAROLINA PARKS AND RECREATION AUTHORITY AND TO EARMARK FUNDS FOR THE PARKS AND RECREATION TRUST FUND AND THE NATURAL HERITAGE TRUST FUND.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 13A. North Carolina Parks and Recreation Authority.

"*§ 143B-313.1. North Carolina Parks and Recreation Authority; creation; powers and duties.*

The North Carolina Parks and Recreation Authority is created, to be administered by the Department of Environment, Health, and Natural Resources. The North Carolina Parks and Recreation Authority shall have at least the following powers and duties:

(1) To receive public and private donations, appropriations, grants, and revenues for deposit into the Parks and Recreation Trust Fund.

(2) To allocate funds for land acquisition from the Parks and Recreation Trust Fund.

(3) To allocate funds for repairs, renovations, improvements, construction, and other capital projects from the Parks and Recreation Trust Fund.

(4) To solicit financial and material support from public and private sources.

(5) To develop effective public and private support for the programs and operations of the parks and recreation areas.

(6) To consider and to advise the Secretary of Environment, Health, and Natural Resources on any matter the Secretary may refer to the North Carolina Parks and Recreation Authority.

"*§ 143B-313.2. North Carolina Parks and Recreation Authority; members; selection; compensation; meetings.*

(a) Membership. -- The North Carolina Parks and Recreation Authority shall consist of nine members. The members shall include persons who are knowledgeable about park and recreation issues in North Carolina or with expertise in finance. Three members shall be appointed by the Governor, three members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and three members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The members shall serve at the pleasure of the appointing authority. The Governor shall appoint one of the members to be Chair of the North Carolina Parks and Recreation Authority. Vacancies shall be appointed by the original appointing authority, and the term shall be for the balance of the unexpired term. The North Carolina Parks and Recreation Authority shall meet at a time and place as designated by the Chair, but no less frequently than quarterly.

(b) Terms. -- Members shall serve two-year terms. Members shall serve no more than two two-year terms.

(c) Compensation. -- The members of the North Carolina Parks and Recreation Authority shall receive per diem and necessary travel and subsistence expenses according to the provisions of G.S. 138-5.

(d) Quorum. -- A majority of the North Carolina Parks and Recreation Authority shall constitute a quorum for the transaction of business.

(e) Staff. -- All clerical and other services required by the North Carolina Parks and Recreation Authority shall be provided by the Secretary of Environment, Health, and Natural Resources."

Sec. 2. G.S. 113-44.15 reads as rewritten:

"*§ 113-44.15. Parks and Recreation Trust Fund.*

(a) There is established a Parks and Recreation Trust Fund in the State Treasurer's Office. The Trust Fund shall be a nonreverting special revenue fund consisting of gifts and grants to the Trust ~~Fund~~ Fund, monies credited to the Trust Fund pursuant to G.S. 105-228.30(b), and other monies appropriated to ~~it~~ the Trust Fund by the General Assembly.

~~It is the intent of the General Assembly to dedicate an amount equal to seventy-five percent (75%) of the State's share of the deed stamp tax levied pursuant to G.S. 105-228.30 to the Parks and Recreation Trust Fund and an additional amount equal to ten percent (10%) of the State's share of the deed stamp tax to the Natural Heritage Trust Fund.~~

(b) Beginning July 1, 1995, funds in the Trust Fund are annually appropriated to the ~~Department~~ North Carolina Parks and Recreation Authority and, unless otherwise specified by the General Assembly or the terms or conditions of a gift or grant, shall be allocated and used as follows:

(1) ~~Seventy-five percent (75%)~~ Sixty-five percent (65%) for the State Parks System for capital projects, repairs and renovations of park facilities, and land acquisition.

(2) ~~Twenty percent (20%)~~ Thirty percent (30%) to provide matching funds to local governmental units on a dollar-for-dollar basis for local park and recreation purposes. These funds shall be allocated by the ~~Secretary~~ North Carolina Parks and Recreation Authority based on criteria patterned after the Open Project Selection Process established for the Land and Water Conservation Fund administered by the National Park Service of the United States Department of the Interior.

(3) Five percent (5%) for the Coastal and Estuarine Water Beach Access Program.

Of the funds appropriated to the North Carolina Parks and Recreation Authority from the Trust Fund each year, no more than three percent (3%) may be used by the Department for operating expenses associated with managing capital improvements projects, acquiring land, and administration of local grants programs.

(c) The ~~Department~~ North Carolina Parks and Recreation Authority shall report on an annual basis to the Joint Legislative Commission on Governmental Operations, the appropriations committees of the House of Representatives and the Senate, and the Fiscal Research Division on allocations from the Trust Fund."

Sec. 3. G.S. 105-228.30(b) reads as rewritten:

"(b) The register of deeds of each county shall remit the proceeds of the tax levied by this section to the county finance officer. The finance officer of each county shall credit one-half of the proceeds to the county's general fund and shall remit the remaining one-half of the proceeds, less the county's allowance for administrative expenses, to the Department of Revenue on a quarterly basis. A county may retain two percent (2%) of the amount of tax proceeds allocated for remittance to the Department of Revenue as compensation for the county's cost in collecting and remitting the State's share of the tax. Of the funds remitted to it pursuant to this section, the Department of Revenue shall credit ~~fifteen percent (15%)~~ seventy-five percent (75%) to the Parks and Recreation Trust Fund established under G.S. 113-44.15 and twenty-five percent (25%) to the Natural Heritage Trust Fund established under G.S. ~~113-77.7 and the remainder to the General Fund~~. 113-77.7."

Sec. 4. Part 13 of Article 7 of Chapter 143B of the General Statutes is repealed.

Sec. 5. Notwithstanding the provisions of G.S. 143B-313.2(b), as enacted in Section 1 of this act, initial appointees of the North Carolina Parks and Recreation Authority, created in Section 1 of this act, shall serve for terms as follows:

(1) The Governor shall designate one of the Governor's appointees and the General Assembly shall designate one member appointed upon the recommendation of the Speaker of the House of Representatives and one member appointed upon the recommendation of the President Pro Tempore of the Senate to serve a one-year term, which shall expire June 30, 1997.

(2) The remaining members shall serve a two-year term, which shall expire June 30, 1998.

Sec. 6. This act becomes effective July 1, 1996.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

S.B. 159

CHAPTER 457

AN ACT TO REWRITE CHAPTER 48 OF THE GENERAL STATUTES RELATING TO ADOPTION AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 48 of the General Statutes is repealed.

Sec. 2. A new Chapter is added to the General Statutes to read:

"Chapter 48.

"Adoptions.

"ARTICLE 1.

"General Provisions.

"*§ 48-1-100. Legislative findings and intent; construction of Chapter.*

(a) The General Assembly finds that it is in the public interest to establish a clear judicial process for adoptions, to promote the integrity and finality of adoptions, to encourage prompt, conclusive disposition of adoption proceedings, and to structure services to adopted children, biological parents, and adoptive parents that will provide for the needs and protect the interests of all parties to an adoption, particularly adopted minors.

(b) With special regard for the adoption of minors, the General Assembly declares as a matter of legislative policy that:

(1) The primary purpose of this Chapter is to advance the welfare of minors by (i) protecting minors from unnecessary separation from their original parents, (ii) facilitating the adoption of minors in need of adoptive placement by persons who can give them love, care, security, and support, (iii) protecting minors from placement with adoptive parents unfit to have responsibility for their care and rearing, and (iv) assuring the finality of the adoption; and

(2) Secondary purposes of this Chapter are (i) to protect biological parents from ill-advised decisions to relinquish a child or consent to the child's adoption, (ii) to protect adoptive parents from assuming responsibility for a child about whose heredity or mental

or physical condition they know nothing, (iii) to protect the privacy of the parties to the adoption, and (iv) to discourage unlawful trafficking in minors and other unlawful placement activities.

(c) In construing this Chapter, the needs, interests, and rights of minor adoptees are primary. Any conflict between the interests of a minor adoptee and those of an adult shall be resolved in favor of the minor.

(d) This Chapter shall be liberally construed and applied to promote its underlying purposes and policies.

"*§ 48-1-101. Definitions.*

In this Chapter, the following definitions apply:

(1) 'Adoptee' means an individual who is adopted, is placed for adoption, or is the subject of a petition for adoption properly filed with the court.

(2) 'Adoption' means the creation by law of the relationship of parent and child between two individuals.

(3) 'Adult' means an individual who has attained 18 years of age, or if under the age of 18, is either married or has been emancipated under the applicable State law.

(3a) 'Adoption facilitator' means an individual or a nonprofit entity that assists biological parents in locating and evaluating prospective adoptive parents without charge.

(4) 'Agency' means a public or private association, corporation, institution, or other person or entity that is licensed or otherwise authorized by the law of the jurisdiction where it operates to place minors for adoption. 'Agency' also means a county department of social services in this State.

(5) 'Child' means a son or daughter, whether by birth or adoption.

(6) 'Department' means the North Carolina Department of Human Resources.

(7) 'Division' means the Division of Social Services of the Department.

(8) 'Guardian' means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by G.S. 35A-1241; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction.

(9) 'Legal custody' of an individual means the general right to exercise continuing care of and control over the individual as authorized by law, with or without a court order, and:

a. Includes the right and the duty to protect, care for, educate, and discipline the individual;

b. Includes the right and the duty to provide the individual with food, shelter, clothing, and medical care; and

c. May include the right to have physical custody of the individual.

(10) 'Minor' means an individual under 18 years of age who is not an adult.

(11) 'Party' means a petitioner, adoptee, or any person whose consent to an adoption is necessary under this Chapter but has not been obtained.

(12) 'Physical custody' means the physical care of and control over an individual.

(13) 'Placement' means transfer of physical custody of a minor to the selected prospective adoptive parent. Placement may be either:

a. Direct placement by a parent or the guardian of the minor; or

b. Placement by an agency.

(14) 'Preplacement assessment' means a document, whether prepared before or after placement, that contains the information required by G.S. 48-3-303 and any rules adopted by the Social Services Commission.

(15) 'Relinquishment' means the voluntary surrender of a minor to an agency for the purpose of adoption.

(16) 'Report to the court' means a document prepared in accordance with G.S. 48-2-501, et seq.

(17) 'State' means a state as defined in G.S. 12-3(11).

(18) 'Stepparent' means an individual who is the spouse of a parent of a child, but who is not a legal parent of the child.

"*§ 48-1-102. Parent includes adoptive parent.*

As used in this Article, the term 'parent' includes one who has become a parent by adoption.

"*§ 48-1-103. Who may adopt.*

Any adult may adopt another individual as provided in this Chapter, but spouses may not adopt each other.

"*§ 48-1-104. Who may be adopted.*

Any individual may be adopted as provided in this Chapter.

"*§ 48-1-105. Name of adoptee after adoption.*

When a decree of adoption becomes final, the name of the adoptee shall become the name designated in the decree.

"*§ 48-1-106. Legal effect of decree of adoption.*

(a) A decree of adoption effects a complete substitution of families for all legal purposes after the entry of the decree.

(b) A decree of adoption establishes the relationship of parent and child between each petitioner and the individual being adopted. From the date of the signing of the decree, the adoptee is entitled to inherit real and personal property by, through, and from the adoptive parents in accordance with the statutes on intestate succession and has the same legal status, including all legal rights and obligations of any kind whatsoever, as a child born the legitimate child of the adoptive parents.

(c) A decree of adoption severs the relationship of parent and child between the individual adopted and that individual's biological or previous adoptive parents. After the entry of a decree of adoption, the former parents are relieved of all legal duties and obligations due from them to the adoptee, except that a former parent's duty to make past-due payments for child support is not terminated, and the former parents are divested of all rights with respect to the adoptee.

(d) Notwithstanding any other provision of this section, neither an adoption by a stepparent nor a readoption pursuant to G.S. 48-6-102 has any effect on the relationship between the child and the parent who is the stepparent's spouse.

(e) In any deed, grant, will, or other written instrument executed before October 1, 1985, the words 'child', 'grandchild', 'heir', 'issue', 'descendant', or an equivalent, or any other word of like import, shall be held to include any adopted person after the entry of the decree of adoption, unless a contrary intention plainly appears from the terms of the instrument, whether the instrument was executed before or after the entry of the decree of adoption. The use of the phrase 'hereafter born' or similar language in any such instrument to establish a class of persons shall not by itself be sufficient to exclude adoptees from inclusion in the class. In any deed, grant, will, or other written instrument executed on or after October 1, 1985, any reference to a natural person shall include any adopted person after the entry of the decree of adoption unless the instrument explicitly states that adopted persons are excluded, whether the instrument was executed before or after the entry of the decree of adoption.

(f) Nothing in this Chapter deprives a biological grandparent of any visitation rights with an adopted minor available under G.S. 50-13.2(b1), 50-13.2A, and 50-13.5(j).

"§ 48-1-107. *Other rights of adoptee.*

A decree of adoption does not divest any vested property interest owned by the adoptee immediately prior to the decree of adoption including any public assistance benefit or child support payment due on or before the date of the decree. An adoption divests any property interest, entitlement, or other interest contingent on an ongoing family relationship with the adoptee's former family.

"§ 48-1-108. *Adoptees subject to Indian Child Welfare Act.*

If the individual is an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901, et seq., then the provisions of that act shall control the individual's adoption.

"§ 48-1-109. *Which agencies may prepare assessments and reports to the court.*

(a) Except as authorized in subsections (b) and (c) of this section, only a county department of social services in this State or an agency licensed by the Department may prepare preplacement assessments pursuant to Article 3 of this Chapter or reports to the court pursuant to Article 2 of this Chapter.

(b) A preplacement assessment prepared in another state may be used in this State only if:

(1) The prospective adoptive parent resided in the state where it was prepared; and

(2) The person or entity that prepared it was authorized by the law of that state to gather the necessary information.

An assessment prepared in another state that does not meet the requirements of this section and G.S. 48-3-303(c) through (h) must be updated by a county department of social services in this State or an agency licensed by the Department before being used in this State.

(c) An order for a report to the court must be sent to a county department of social services in this State or an agency licensed by the Department. If the petitioner moves to a different state before the agency completes the report, the agency shall request a report from an agency authorized to prepare such reports in the petitioner's new state of residence pursuant to the Interstate Compact on the Placement of Children, G.S. 110-57.1, et seq.

"ARTICLE 2.

"General Adoption Procedure.

"Part 1. Jurisdiction and Venue.

"§ 48-2-100. *Jurisdiction.*

(a) Adoption shall be by a special proceeding before the clerk of superior court.

(b) Except as provided in subsection (c) of this section, jurisdiction over adoption proceedings commenced under this Chapter exists if, at the commencement of the proceeding:

(1) The adoptee has lived in this State for at least the six consecutive months immediately preceding the filing of the petition or from birth, and the prospective adoptive parent is domiciled in this State; or

(2) The prospective adoptive parent has lived in or been domiciled in this State for at least the six consecutive months immediately preceding the filing of the petition.

(c) The courts of this State shall not exercise jurisdiction under this Chapter if at the time the petition for adoption is filed, a court of any other state is exercising jurisdiction substantially in conformity with the Uniform Child Custody Jurisdiction Act, G.S. 50A-1, et seq.

"§ 48-2-101. *Venue.*

A petition for adoption may be filed with the clerk of the superior court in the county in which:

(1) A petitioner lives, or is domiciled, at the time of filing;

(2) The adoptee lives; or

(3) An office of the agency that placed the adoptee is located.

"§ 48-2-102. *Transfer, stay, or dismissal.*

(a) If the court, on its own motion or on motion of a party, finds in the interest of justice that the matter should be heard in another county where venue lies under G.S. 48-2-101, the court may transfer, stay, or dismiss the proceeding.

(b) If an adoptee is also the subject of a pending proceeding under Subchapter XI of Chapter 7A of the General Statutes, then the district court having jurisdiction under Chapter 7A shall retain jurisdiction until the final order of adoption is entered. The district court may waive jurisdiction for good cause.

"Part 2. General Procedural Provisions.

"§ 48-2-201. *Appointment of attorney or guardian ad litem.*

(a) The court may appoint an attorney to represent a parent or alleged parent who is unknown or whose whereabouts are unknown and who has not responded to notice of the adoption proceeding as provided in Part 4 of this Article.

(b) The court on its own motion may appoint an attorney or a guardian ad litem to represent the interests of the adoptee in a contested proceeding brought under this Chapter.

"§ 48-2-202. *No right to jury.*

All proceedings under this Chapter must be heard by the court without a jury.

"§ 48-2-203. *Confidentiality of proceedings under Chapter.*

A judicial hearing in any proceeding pursuant to this Chapter shall be held in closed court.

"§ 48-2-204. *Death of a joint petitioner pending final decree.*

When spouses have petitioned jointly to adopt and one spouse dies before entry of a final decree, the adoption may nevertheless proceed in the names of both spouses. The name of the deceased spouse shall be entered as one of the adoptive parents on the new birth certificate prepared pursuant to Article 9 of this Chapter, and for purposes of inheritance, testate or intestate, the adoptee shall be treated as a child of the deceased.

"§ 48-2-205. *Recognition of adoption decrees from other jurisdictions.*

A final adoption decree issued by any other state must be recognized in this State. Where a child has been previously adopted in a foreign country by petitioners seeking to readopt the child under the laws of North Carolina, the adoption order entered in the foreign country may be accepted in lieu of the consent of the biological parent or parents or the guardian of the child to the readoption.

"Part 3. Petition for Adoption.

"§ 48-2-301. *Petition for adoption; who may file.*

(a) A prospective adoptive parent may file a petition for adoption pursuant to Article 3 of this Chapter only if a minor has been placed with the prospective adoptive parent pursuant to Part 2 of Article 3 of this Chapter unless the requirement of placement is waived by the court for cause.

(b) Except as authorized by Articles 4 and 6 of this Chapter, the spouse of a petitioner must join in the petition, unless the spouse has been declared incompetent or unless this requirement is otherwise waived by the court for cause.

(c) If the individual who files the petition is unmarried, no other individual may join in the petition.

"§ 48-2-302. *Time for filing petition.*

(a) Except for petitions filed pursuant to Articles 4 and 6 of this Chapter, a petition for adoption must be filed no later than 30 days after a minor is placed with the petitioner or this State acquires jurisdiction to hear the petition, whichever is later, unless the court extends the time for filing.

(b) If a petition is not filed in accordance with subsection (a) of this section, any person may notify the county department of social services for appropriate action.

(c) A petition for adoption may be filed concurrently with a petition to terminate parental rights.

"§ 48-2-303. *Caption of petition for adoption.*

The caption of the petition shall be substantially as follows:

STATE OF NORTH CAROLINA

IN THE DISTRICT COURT

.....COUNTY
BEFORE THE CLERK
.....
(Full name of petitioning father)
and
.....
(Full name of petitioning mother) PETITION FOR ADOPTION
and
FOR THE ADOPTION OF
.....
(Full name of adoptee as used in proceeding).

"*§ 48-2-304. Petition for adoption; content.*

(a) The original petition for adoption must be signed and verified by each petitioner, and the original and two exact or conformed copies shall be filed with the clerk of court. The petition shall state:

(1) Each petitioner's full name, current address, place of domicile if different from current address, and whether each petitioner has resided or been domiciled in this State for the six months immediately preceding the filing of the petition;

(2) The marital status and gender of each petitioner;

(3) The sex and, if known, the date and state or country of birth of the adoptee;

(4) The full name by which the adoptee is to be known if the petition is granted;

(5) That the petitioner desires and agrees to adopt and treat the adoptee as the petitioner's lawful child; and

(6) A description and estimate of the value of any property of the adoptee.

(b) Any petition to adopt a minor shall also state:

(1) The length of time the adoptee has been in the physical custody of the petitioner;

(2) If the adoptee is not in the physical custody of the petitioner, the reason why the petitioner does not have physical custody and the date and manner in which the petitioner intends to acquire custody;

(3) That the petitioner has the resources, including those available under a subsidy for an adoptee with special needs, to provide for the care and support of the adoptee;

(4) Any information required by the Uniform Child Custody Jurisdiction Act, G.S. 50A-1, et seq., which is known to the petitioner;

(5) That any required assessment has been completed or updated within the 12 months before the placement; and

(6) That all necessary consents, relinquishments, or terminations of parental rights have been obtained and will be filed as additional documents with the petition; or that the necessary consents, relinquishments, and terminations of parental rights that have been obtained will be filed as additional documents with the petition, along with the document listing the names of any other individuals

whose consent, relinquishment, or termination of rights may be necessary but has not been obtained.

(c) A petition to adopt a minor under Article 3 of this Chapter shall also state:

(1) A description of the source of placement and the date of placement of the adoptee with the petitioner; and

(2) That the provisions of the Interstate Compact on the Placement of Children, G.S. 110-57.1, et seq., were followed if the adoptee was brought into this State from another state for purposes of adoption.

(d) A petition to adopt a minor under Article 4 of this Chapter shall also state:

(1) The date of the petitioner's marriage, the name of the petitioner's spouse, and whether the spouse is deceased or has been adjudicated incompetent;

(2) The length of time the petitioner's spouse or the petitioner has had legal custody of the adoptee and the circumstances under which custody was acquired; and

(3) That the adoptee has resided primarily with the petitioner or with the petitioner and the petitioner's spouse during the six months immediately preceding the filing of the petition.

(e) Any petition to adopt an adult shall also state:

(1) The name, age, and last known address of any child of the prospective adoptive parent, including a child previously adopted by the prospective adoptive parent or the adoptive parent's spouse, and the date and place of the adoption; and

(2) The name, age, and last known address of any living parent, spouse, or child of the adoptee.

(f) The Department may promulgate a standard adoption petition.

"*§ 48-2-305. Petition for adoption; additional documents.*

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

(1) Any required affidavit of parentage executed pursuant to G.S. 48-3-206;

(2) Any required consent or relinquishment that has been executed;

(3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the adoptee;

(4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the adoptee;

(5) A copy of any required preplacement assessment certified by the agency that prepared it or an affidavit from the petitioner stating why the assessment is not available;

(6) A certified copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's original family which the petitioner received before the placement or at any later time, or if this document is not available, an affidavit stating the reason why it is not available;

(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, G.S. 110-57.1, et seq., authorizing a minor to come into this State;

(8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or relinquishment; and

(9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.

The petitioner may also file any other document necessary or helpful to the court's determination.

"*§ 48-2-306. Omission of required information.*

(a) Before entry of a decree of adoption, the court may require or allow the filing of any additional information required by this Chapter.

(b) After entry of a decree of adoption, omission of any information required by G.S. 48-2-304 and G.S. 48-2-305 does not invalidate the decree.

"Part 4. Notice of Pendency of Proceedings.

"*§ 48-2-401. Notice by petitioner.*

(a) No later than 30 days after a petition for adoption is filed pursuant to Part 3 of this Article, the petitioner shall serve notice of the filing on the persons required to receive notice under subsections (b), (c), and (d) of this section.

(b) In all adoptions, the petitioner shall serve notice of the filing on:

(1) Any individual whose consent to the adoption is required but has not been obtained, has been revoked in accord with this Chapter, or has become void as provided in this Chapter;

(2) The spouse of the petitioner if that spouse is required to join in the petition and petitioner is requesting that the joinder requirement be waived;

(3) Any individual who has executed a consent or relinquishment, but who the petitioner has actually been informed has filed an action to set it aside for fraud or duress; and

(4) Any other person designated by the court who can provide information relevant to the proposed adoption.

(c) In the adoption of a minor, the petitioner shall also serve notice of the filing on:

(1) A minor whose consent is dispensed with under G.S. 48-3-603(b)(2);

(2) Any agency that placed the adoptee;

(3) A man who to the actual knowledge of the petitioner claims to be or is named as the biological or possible biological father of the minor, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, but notice need not be served upon a man who has executed a consent, a relinquishment, or a notarized statement denying paternity or disclaiming any interest in the minor, or a man whose parental

rights have been legally terminated or who has been judicially determined not to be the minor's parent; and

(4) Any individual who the petitioner has been actually informed has legal or physical custody of the minor or who has a right of visitation or communication with the minor under an existing court order issued by a court in this State or another state.

(d) In the adoption of an adult, the petitioner shall also serve notice of the filing on any children of the prospective adoptive parent and any parent, spouse, or child of the adoptee who are listed in the petition to adopt.

(e) Only those persons identified in subsections (b), (c), and (d) of this section are entitled to notice of the proceeding.

(f) A notice required under this section must state that the person served must file a response to the petition within 30 days after service in order to participate in and to receive further notice of the proceeding, including notice of the time and place of any hearing.

"§ *48-2-402. Manner of service.*

(a) Service of the notice required under G.S. 48-2-401 must be made as provided by G.S. 1A-1, Rule 4, for service of process.

(b) In the event that the identity of a biological or possible biological parent cannot be ascertained and notice is required, the parent or possible parent shall be served by publication pursuant to G.S. 1A-1, Rule 4 (j1). The time for response shall be the time provided in the rule. The words 'In re Doe' may be substituted for the title of the action in the notice as long as the notice contains the correct docket number. The notice shall be directed to 'the unknown father [or mother] of' the adoptee, and the adoptee shall be described by sex, date of birth, and place of birth. The notice shall contain any information known to the petitioner that would allow an unknown parent or possible parent to identify himself or herself as the individual being addressed, such as the approximate date and place of conception, any name by which the other biological parent was known to the unknown parent or possible parent, and any fact about the unknown parent or possible parent known to or believed by the other biological parent. The notice shall also state that any parental rights the unknown parent or possible parent may have will be terminated upon entry of the order of adoption.

(c) In an agency placement under Article 3, the agency or other proper person shall file a petition to terminate the parental rights of an unknown parent or possible parent instead of serving notice under this subsection, and the court shall stay any adoption proceeding already filed.

"§ *48-2-403. Notice of proceedings by clerk.*

No later than five days after a petition is filed, the clerk of the court shall give notice of the adoption proceeding by certified mail, return receipt requested, to any agency that has undertaken but not yet completed a preplacement assessment and any agency ordered to make a report to the court pursuant to Part 5 of this Article.

"§ *48-2-404. Notice of proceedings by court to alleged father.*

If, at any time in the proceeding, it appears to the court that there is an alleged father of a minor adoptee as described in G.S. 48-2-401(c)(3) who has not been given notice, the court shall require notice of the proceeding to be given to him pursuant to G.S. 48-2-402.

"§ 48-2-405. *Rights of persons entitled to notice.*

A person entitled to notice whose consent is not required may appear and present evidence only as to whether the adoption is in the best interest of the adoptee.

"§ 48-2-406. *Waiver of notice; effect.*

(a) If notice is required under this Part, it may be waived in open court by the person entitled to receive it or by an agent authorized by that person; it may also be waived at any time in a writing signed by the person entitled to receive the notice.

(b) A person who has executed a consent or relinquishment or otherwise waived notice is not a necessary party and, except as provided in subsection (c) of this section, is not entitled to appear in any subsequent proceeding related to the petition.

(c) A parent who has executed a consent or relinquishment may appear in the adoption proceeding for the limited purpose of moving to set aside the consent or relinquishment on the grounds that it was obtained by fraud or duress.

"§ 48-2-407. *Filing proof of service.*

Proof of service of notice on each person entitled to receive notice under this Part, or a certified copy of each waiver of notice, must be filed with the court before the hearing on the adoption begins.

"Part 5. Report to the Court.

"§ 48-2-501. *Report to the court during proceeding for adoption of a minor.*

(a) Whenever a petition for adoption of a minor is filed, the court shall order a report to the court made to assist the court to determine if the proposed adoption of the minor by the petitioner is in the minor's best interest.

(b) Consistent with G.S. 48-1-109, the court shall order the report to be prepared:

(1) By the agency that placed the minor;

(2) By the agency that made the preplacement assessment pursuant to Part 3 of Article 3 of this Chapter; or

(3) By another agency.

(c) The court shall provide the individual who prepares the report with copies of: (i) the petition to adopt; and (ii) the documents filed with it.

"§ 48-2-502. *Preparation and content of report.*

(a) In preparing a report to the court, the agency shall conduct a personal interview with each petitioner in the petitioner's residence and at least one additional interview with each petitioner and the adoptee, and shall observe the relationship between the adoptee and the petitioner or petitioners.

(b) The report must be in writing and contain:

(1) An account of the petitioner's marital or family status, physical and mental health, home environment, property, income, and financial obligations; if there has been a preplacement assessment, the account may be limited to any changes since the filing of the preplacement assessment;

(2) All reasonably available nonidentifying information concerning the physical, mental, and emotional condition of the adoptee required

by G.S. 48-3-205 which is not already included in the document prepared under that section;

(3) Copies of any court order, judgment, decree, or pending legal proceeding affecting the adoptee, the petitioner, or any child of the petitioner relevant to the welfare of the adoptee;

(4) A list of the expenses, fees, or other charges incurred, paid, or to be paid in connection with the adoption that can reasonably be ascertained by the agency;

(5) Any fact or circumstance known to the agency that raises a specific concern about whether the proposed adoption is contrary to the best interest of the adoptee because it poses a significant risk of harm to the well-being of the adoptee;

(6) A finding by the agency concerning the suitability of the petitioner and the petitioner's home for the adoptee;

(7) A recommendation concerning the granting of the petition; and

(8) Such other information as may be required by rules adopted pursuant to subsection (c) of this section.

(c) The Social Services Commission may adopt rules to implement the provisions of this section.

"*§ 48-2-503. Timing and filing of report.*

(a) The agency shall complete a written report and file it with the court within 60 days after receipt of the order under G.S. 48-2-501 unless the court extends the time for filing.

(b) If the agency identifies a specific concern about the suitability of the petitioner or the petitioner's home for the adoptee, the agency must file an interim report immediately, which must contain an account of the specific concern.

(c) The agency shall give the petitioner a copy of each report filed with the court, and the agency shall retain a copy.

"*§ 48-2-504. Fee for report.*

(a) An agency that prepares a report to the court may charge the petitioner a reasonable fee for preparing and writing the report. No fee may be charged except pursuant to a written fee agreement which must be signed by the parties to be charged prior to the beginning of the preparation. The fee agreement may not be based on the outcome of the report or the adoption proceeding.

(b) A fee for a report is subject to review by the court pursuant to G.S. 48-2-602 and G.S. 48-2-603.

(c) The Department shall set the maximum fees, based on ability to pay and other factors, which may be charged by county departments of social services. The Department shall require waiver of fees for those unable to pay. Fees collected under this section shall be applied to the costs of preparing and writing reports and shall be used by the county department of social services to supplement and not to supplant appropriated funds.

"Part 6. Dispositional Hearing; Decree of Adoption.

"*§ 48-2-601. Hearing on, or disposition of, adoption petition; timing.*

(a) If it appears to the court that the petition is not contested, the court may dispose of the petition without a formal hearing.

(b) No later than 90 days after a petition for adoption has been filed, the court shall set a date and time for hearing or disposing of the petition.

(c) The hearing or disposition must take place no later than six months after the petition is filed, but the court for cause may extend the time for the hearing or disposition.

"§ 48-2-602. *Disclosure of fees and charges.*

At least 10 days before the date of the hearing or disposition, each petitioner shall file with the court an affidavit accounting for any payment or disbursement of money or anything of value made or agreed to be made by or on behalf of each petitioner in connection with the adoption, or pursuant to Article 10, including the amount of each payment or disbursement made or to be made and the name and address of each recipient. The court in its discretion may request a more specific statement of any fees, charges, or payments made or to be made by any petitioner in connection with the adoption.

"§ 48-2-603. *Hearing on, or disposition of, petition to adopt a minor.*

(a) At the hearing on, or disposition of, a petition to adopt a minor, the court shall grant the petition upon finding by a preponderance of the evidence that the adoption will serve the best interest of the adoptee, and that:

(1) At least 90 days have elapsed since the filing of the petition for adoption, unless the court for cause waives this requirement;

(2) The adoptee has been in the physical custody of the petitioner for at least 90 days, unless the court for cause waives this requirement;

(3) Notice of the filing of the petition has been served on any person entitled to receive notice under Part 4 of this Article;

(4) Each necessary consent, relinquishment, waiver, or judicial order terminating parental rights, has been obtained and filed with the court and the time for revocation has expired;

(5) Any assessment required by this Chapter has been filed with and considered by the court;

(6) If applicable, the requirements of the Interstate Compact on the Placement of Children, G.S. 110-57.1, et seq., have been met;

(7) Any motion to dismiss the proceeding has been denied;

(8) Each petitioner is a suitable adoptive parent;

(9) Any accounting and affidavit required under G.S. 48-2-602 has been reviewed by the court, and the court has denied, modified, or ordered reimbursement of any payment or disbursement that violates Article 10 or is unreasonable when compared with the expenses customarily incurred in connection with an adoption;

(10) The petitioner has received information about the adoptee and the adoptee's biological family if required by G.S. 48-3-205; and

(11) There has been substantial compliance with the provisions of this Chapter.

(b) If the Court finds a violation of this Chapter pursuant to Article 10 or of the Interstate Compact on the Placement of Children, G.S. 110-57.1, et seq., but determines that in every other respect there has been substantial

compliance with the provisions of this Chapter, and the adoption will serve the best interest of the adoptee, the court shall:

(1) Grant the petition to adopt; and

(2) Impose the sanctions provided by this Chapter against any individual or entity who has committed a prohibited act or report the violations to the appropriate legal authorities.

(c) The court on its own motion may continue the hearing for further evidence.

"§ 48-2-604. *Denying petition to adopt a minor.*

If the court denies a petition to adopt a minor, the custody of the minor shall revert to any agency or person having custody immediately before the filing of the petition. If the placement of the child was a direct placement under Article 3, the court shall notify the director of social services of the county in which the petition was filed of the dismissal, and the director of social services shall be responsible for taking appropriate action for the protection of the child.

"§ 48-2-605. *Hearing on petition to adopt an adult.*

(a) At the hearing on a petition to adopt an adult, the prospective adoptive parent and the adoptee shall both appear in person, unless the court waives this requirement for cause, in which event an appearance may be made for either or both of them by an attorney authorized in writing to make the appearance.

(b) At the hearing, the court shall grant the petition for adoption upon finding by a preponderance of the evidence all of the following:

(1) At least 30 days have elapsed since the filing of the petition for adoption, but the court for cause may waive this requirement;

(2) Notice of the petition has been served on any person entitled to receive notice under Part 4 of this Article;

(3) Each necessary consent, waiver, document, or judicial order has been obtained and filed with the court;

(4) The adoption is entered into freely and without duress or undue influence for the purpose of creating the relation of parent and child between each petitioner and the adoptee, and each petitioner and the adoptee understand the consequences of the adoption; and

(5) There has been substantial compliance with the provisions of this Chapter.

"§ 48-2-606. *Decree of adoption.*

(a) A decree of adoption must state at least:

(1) The name and gender of each petitioner for adoption;

(2) Whether the petitioner is married, a stepparent, or single;

(3) The name by which the adoptee is to be known;

(4) Information to be incorporated in a new standard certificate of birth to be issued by the State Registrar;

(5) The adoptee's date and place of birth, if known, or as determined under subsection (b) of this section in the case of an adoptee born outside the United States;

(6) The effect of the decree of adoption as set forth in G.S. 48-1-106; and

(7) That the adoption is in the best interest of the adoptee.

(b) In stating the date and place of birth of an adoptee born outside the United States, the court shall:

(1) Enter the date and place of birth as stated in the certificate of birth from the country of origin, the United States Department of State's report of birth abroad, or the documents of the United States Immigration and Naturalization Service;

(2) If the exact place of birth is unknown, enter the information that is known, including the country of origin; and

(3) If the exact date of birth is unknown, determine and enter a date of birth based upon medical evidence by affidavit or testimony as to the probable chronological age of the adoptee and other evidence the court finds appropriate to consider.

(c) A decree of adoption must not contain the name of a former parent of the adoptee.

"§ 48-2-607. *Appeals.*

(a) Except as provided in subsections (b) and (c) of this section, after the final order of adoption is entered, no party to an adoption proceeding nor anyone claiming under such a party may question the validity of the adoption because of any defect or irregularity, jurisdictional or otherwise, in the proceeding, but shall be fully bound by the order. No adoption may be attacked either directly or collaterally because of any procedural or other defect by anyone who was not a party to the adoption. The failure on the part of the court or an agency to perform duties or acts within the time required by the provisions of this Chapter shall not affect the validity of any adoption proceeding.

(b) A party to an adoption proceeding may appeal a final decree of adoption by giving notice of appeal as provided in G.S. 1-272 and G.S. 1-279.1.

(c) A parent or guardian whose consent or relinquishment was obtained by fraud or duress may, within six months of the time the fraud or duress is or ought reasonably to have been discovered, move to have the decree of adoption set aside and the consent declared void. A parent or guardian whose consent was necessary under this Chapter but was not obtained may, within six months of the time the omission is or ought reasonably to have been discovered, move to have the decree of adoption set aside. Any action for damages against an adoptee or the adoptive parents for fraud or duress in obtaining a consent must be brought within six months of the time the fraud or duress is or ought reasonably to have been discovered.

"ARTICLE 3.

"Adoption of Minors.

"Part 1. General Provisions.

"§ 48-3-100. *Application of Article.*

This Article shall apply to the adoption of minors by adults who are not their stepparents.

"Part 2. Placement of Minors for Adoption.

"§ 48-3-201. *Who may place minors for adoption.*

(a) Only the following may place the minor for adoption:

(1) An agency,

(2) A guardian,

(3) Both parents acting jointly, if

a. Both parents are married to each other and living together, or

b. One parent has legal custody of a minor and the other has physical custody but neither has both, or

(4) A parent with legal and physical custody of a minor, except as provided in subdivision (3) of this subsection.

(b) A parent, guardian, or agency that places a minor directly for adoption shall execute a consent to the minor's adoption pursuant to Part 6 of this Article.

(c) A parent or guardian of a minor who wants an agency to place the minor for adoption must execute a relinquishment to the agency pursuant to Part 7 of this Article before the agency can place the minor.

(d) An agency having legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed, even if only one parent has executed a relinquishment pursuant to Part 7 of this Article or has had parental rights terminated, unless the other parent notifies the agency in writing of the parent's objections before the placement. The agency shall act promptly after accepting a relinquishment from one parent to obtain the consent or relinquishment of the other parent or to terminate the rights between the minor and the other parent pursuant to Article 24B of Chapter 7A of the General Statutes.

"§ 48-3-202. *Direct placement for adoption.*

(a) In a direct placement, a parent or guardian must personally select a prospective adoptive parent, but a parent or guardian may obtain assistance from another person or entity, or an adoption facilitator, in locating or evaluating a prospective adoptive parent, subject to the limitations of Article 10 of this Chapter.

(b) Information about a prospective adoptive parent must be provided to a parent or guardian by the prospective adoptive parent, the prospective adoptive parent's attorney, or a person or entity assisting the parent or guardian. This information must include the preplacement assessment or assessments prepared pursuant to Part 3 of this Article, and may include additional information requested by the parent or guardian.

"§ 48-3-203. *Agency placement adoption.*

(a) An agency may acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a relinquishment pursuant to Part 7 of this Article or by a court order terminating the rights and duties of a parent or guardian of the minor.

(b) An agency shall give any individual upon request a written statement of the services it provides and of its procedure for selecting a prospective adoptive parent for a minor, including the role of the minor's parent or guardian in the selection process. This statement must include a schedule of any fee or expenses charged or required to be paid by the agency and a summary of the provisions of this Chapter that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent.

(c) An agency may notify the parent when a placement has occurred and when an adoption decree is issued.

(d) The selection of a prospective adoptive parent for a minor shall be made by the agency on the basis of a preplacement assessment. The selection may not be delegated, but may be based on criteria requested by a parent who relinquishes the child to the agency.

(e) In addition to the authority granted in G.S. 131D-10.5, the Social Services Commission may adopt rules for placements by agencies consistent with the purposes of this Chapter.

"*§ 48-3-204. Recruitment of adoptive parents.*

(a) The Social Services Commission may adopt rules requiring agencies to adopt and follow appropriate recruitment plans for prospective adoptive parents.

(b) The Division may maintain a statewide photo-listing service for all agencies within this State as a means of recruiting adoptive parents for minors who have been legally freed for adoption.

(c) Agencies and the Division shall cooperate with similar agencies in other states, and with national adoption exchanges in an effort to recruit suitable adoptive parents.

"*§ 48-3-205. Disclosure of background information.*

(a) Notwithstanding any other provision of law, before placing a minor for adoption, an individual or agency placing the minor, or the individual's agent, must compile and provide to the prospective adoptive parent a written document containing the following information:

(1) The date of the birth of the minor and the minor's weight at birth and any other reasonably available nonidentifying information about the minor that is relevant to the adoption decision or to the minor's development and well-being;

(2) Age of the biological parents in years at the time of the minor's birth;

(3) Heritage of the biological parents, which shall consist of nationality, ethnic background, and race;

(4) Education of the biological parents, which shall be the number of years of school completed by the biological parents at the time of the minor's birth; and

(5) General physical appearance of the biological parents.

In addition, the written document must also include all reasonably available nonidentifying information about the health of the minor, the biological parents, and other members of the biological parents' families that is relevant to the adoption decision or to the minor's health and development. This health-related information shall include each such individual's present state of physical and mental health, health and genetic histories, and information concerning any history of emotional, physical, sexual, or substance abuse. This health-related information shall also include an account of the prenatal and postnatal care received by the minor. The information described in this subsection, if known, shall, upon written request of the minor, be made available to the minor upon the minor reaching age 18 or upon the minor's marriage or emancipation.

(b) Information provided under this section, or any information directly or indirectly derived from such information, may not be used against the provider or against an individual described in subsection (a) of this section

who is the subject of the information in any criminal action or any civil action for damages. In addition, information provided under this section may not be admitted in evidence against the provider or against an individual described in subsection (a) of this section who is the subject of the information in any other action or proceeding.

(c) The agency placing the minor shall receive and preserve any additional health-related information obtained after the preparation of the document described in subsection (a) of this section.

(d) The Division shall develop and make available forms designed to collect the information described in subsection (a) of this section.

"§ 48-3-206. *Affidavit of parentage.*

(a) To assist the court in determining that a direct placement was valid and all necessary consents have been obtained, the parent or guardian who placed the minor shall execute an affidavit setting out names, last known addresses, and marital status of the minor's parents or possible parents.

(b) In an agency placement, the agency shall obtain from at least one individual who relinquishes a minor to the agency an affidavit setting out the information required in subsection (a) of this section.

"§ 48-3-207. *Interstate placements.*

An interstate placement of a minor for purposes of adoption shall comply with the Interstate Compact on the Placement of Children, G.S. 110-57.1 et seq.

"Part 3. Preplacement Assessment.

"§ 48-3-301. *Preplacement assessment required.*

(a) Except as provided in subsection (b) of this section, placement of a minor may occur only if a written preplacement assessment:

(1) Has been completed or updated within the 12 months immediately preceding the placement; and

(2) Contains a finding that the individual who is the subject of the assessment is suitable to be an adoptive parent, either in general or for a specific minor.

(b) A preplacement assessment is not required when a parent or guardian places a minor directly with a grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, or great-grandparent of the minor.

(c) If a direct placement is made in violation of this section:

(1) The prospective adoptive parent shall request any preplacement assessment already commenced to be expedited, and if none has been commenced, shall obtain a preplacement assessment from an agency as authorized by G.S. 48-1-109; in either case, the assessment shall include the fact and date of placement;

(2) The court may not enter a decree of adoption until both a favorable preplacement assessment and a report to the court have been completed and filed, and the court may not order a report to the court for at least 30 days after the preplacement assessment has been completed; and

(3) If the person who placed the minor executes a consent before receiving a copy of the preplacement assessment, G.S. 48-3-608 shall determine the time within which that person may revoke.

"§ 48-3-302. *Request for preplacement assessment.*

(a) An individual seeking to adopt may request a preplacement assessment at any time by an agency authorized by G.S. 48-1-109 to prepare preplacement assessments.

(b) An individual requesting a preplacement assessment need not have located a prospective adoptee when the request is made.

(c) An individual may have more than one preplacement assessment or may request that an assessment, once initiated, not be completed.

(d) If an individual is seeking to adopt a minor from a particular agency, the agency may require the individual to be assessed by its own employee, even if the individual has already had a favorable preplacement assessment completed by another agency.

(e) If an individual requesting a preplacement assessment has identified a prospective adoptive child and has otherwise been unable to obtain a preplacement assessment, the county department of social services must, upon request, prepare or contract for the preparation of the preplacement assessment. Except as provided in this subsection, no agency is required to conduct a preplacement assessment unless it agrees to do so.

"§ 48-3-303. *Content and timing of preplacement assessment.*

(a) A preplacement assessment shall be completed within 90 days after a request has been accepted.

(b) The preplacement assessment must be based on at least one personal interview with each individual being assessed in the individual's residence and any report received pursuant to subsection (c) of this section.

(c) The preplacement assessment must, after a reasonable investigation, report on the following about the individual being assessed:

(1) Age and date of birth, nationality, race, or ethnicity, and any religious preference;

(2) Marital and family status and history, including the presence of any children born to or adopted by the individual and any other children in the household;

(3) Physical and mental health, including any addiction to alcohol or drugs;

(4) Educational and employment history and any special skills;

(5) Property and income, and current financial information provided by the individual;

(6) Reason for wanting to adopt;

(7) Any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement;

(8) Whether the individual has ever been a respondent in a domestic violence proceeding or a proceeding concerning a minor who was allegedly abused, dependent, neglected, abandoned, or delinquent, and the outcome of the proceeding;

(9) Whether the individual has ever been convicted of a crime other than a minor traffic violation;

(10) Whether the individual has located a parent interested in placing a child with the individual for adoption and a brief, nonidentifying description of the parent and the child; and

(11) Any other fact or circumstance that may be relevant to a determination of the individual's suitability to be an adoptive parent, including the quality of the environment in the home and the functioning of any children in the household.

When any of the above is not reasonably available, the preplacement assessment shall state why it is unavailable.

(d) The agency shall conduct an investigation for any criminal record as permitted by law.

(e) In the preplacement assessment, the agency shall review the information obtained pursuant to subsections (b), (c), and (d) of this section and evaluate the individual's strengths and weaknesses to be an adoptive parent. The agency shall then determine whether the individual is suitable to be an adoptive parent.

(f) If the agency determines that the individual is suitable to be an adoptive parent, the preplacement assessment shall include specific factors which support that determination.

(g) If the agency determines that the individual is not suitable to be an adoptive parent, the replacement assessment shall state the specific concerns which support that determination. A specific concern is one that reasonably indicates that placement of any minor, or a particular minor, in the home of the individual would pose a significant risk of harm to the well-being of the minor.

(h) In addition to the information and finding required by subsections (c) through (g) of this section, the preplacement assessment must contain a list of the sources of information on which it is based.

(i) The Social Services Commission shall have authority to establish by rule additional standards for preplacement assessments.

"§ *48-3-304. Fees for preplacement assessment.*

(a) An agency that prepares a preplacement assessment may charge a reasonable fee for doing so, even if the individual being assessed requests that it not be completed. No fee may be charged except pursuant to a written agreement which must be signed by the individual to be charged prior to the beginning of the assessment. The fee agreement may not be based on the outcome of the assessment or any adoption.

(b) An assessment fee is subject to review by the court pursuant to G.S. 48-2-602 and G.S. 48-2-603 if the person who is assessed files a petition to adopt.

(c) The Department shall set the maximum fees, based on the individual's ability to pay and other factors, which may be charged by county departments of social services. The Department shall require waiver of fees for those unable to pay. Fees collected under this section shall be applied to the costs of preparing preplacement assessments and shall be used by the county department of social services to supplement and not to supplant appropriated funds.

"§ *48-3-305. Agency disposition of preplacement assessments.*

(a) The agency shall give a copy of any completed or incomplete preplacement assessment to the individual who was the subject of the assessment. If the assessment contains a finding that an individual is not

suitable to be an adoptive parent, the agency shall contemporaneously file the original with the Division.

(b) The agency shall retain a copy of a completed or incomplete preplacement assessment for at least five years.

"§ 48-3-306. *Favorable preplacement assessments.*

An individual who receives a preplacement assessment containing a finding that the individual is suitable to be an adoptive parent shall provide a copy of the assessment to any person or agency considering the placement of a minor with the individual for adoption and shall also attach a copy of the assessment to any petition to adopt.

"§ 48-3-307. *Assessments completed after placement.*

(a) If a placement occurs before a preplacement assessment is completed, the prospective adoptive parent shall deliver a copy of the assessment when completed, whether favorable or unfavorable, to the parent or guardian who placed the minor. A prospective adoptive parent, who cannot after the exercise of due diligence personally locate the parent or guardian who placed the minor, may deposit a copy of the preplacement assessment in the United States mail, return receipt requested, addressed to the address of the parent or guardian given in the consent, and the date of receipt by the parent or guardian for purposes of G.S. 48-3-608 shall be deemed to be the date of delivery or last attempted delivery.

(b) If a petition for adoption is filed before the preplacement assessment is completed, the prospective adoptive parent shall attach to the petition an affidavit explaining why the assessment has not been completed and, upon completion of the assessment, shall file it with the court in which the petition is pending.

"§ 48-3-308. *Response to unfavorable preplacement assessment.*

(a) Each agency shall have a procedure for allowing an individual who has received an unfavorable preplacement assessment to have the assessment reviewed by the agency. In addition to the authority in G.S. 131D-10.5, the Social Services Commission shall have authority to adopt rules implementing this section.

(b) An individual who receives an unfavorable preplacement assessment may, after exhausting the agency's procedures for internal review, prepare and file a written response with the Division and the agency. The Division shall attach the response to the unfavorable assessment.

(c) The Division shall acknowledge receipt of the response but shall have no authority to take any action with respect to the response.

(d) If an unfavorable preplacement assessment is completed and filed with the Division and a minor has been placed with a prospective adoptive parent who is the subject of the unfavorable assessment, the Division shall notify the county department of social services, which shall take appropriate action.

(e) An unfavorable preplacement assessment and any response filed with the Division under this section shall not be public records as set forth in Chapter 132 of the General Statutes.

"Part 4. Transfer of Physical Custody of Minor by Health Care Facility or Attending Practitioner for Purposes of Adoption.

"§ 48-3-401. *'Health care facility' and 'attending practitioner' defined.*

As used in this Article:

(1) 'Health care facility' includes a hospital and maternity home; and

(2) 'Attending practitioner' includes a physician, licensed nurse, or other licensed professional provider of health care who assists in a birth.

"§ 48-3-402. *Authorization required to transfer physical custody.*

(a) A health care facility or attending practitioner who has physical custody may release a minor for the purpose of adoption to a prospective adoptive parent or agency not legally entitled to the custody of the minor if, in the presence of an employee of the health care facility or the attending practitioner:

(1) A parent, guardian, or other person or entity having legal custody of the minor signs an authorization of the transfer of physical custody; and

(2) The authorization states that the release is for the purpose of adoption.

(b) The health care facility or attending practitioner shall retain the authorization described in subsection (a) of this section for at least one year.

"Part 5. Custody of Minors Pending Final Decree of Adoption.

"§ 48-3-501. *Petitioner entitled to custody in direct placement adoptions.*

Unless the court orders otherwise, when a parent or guardian places the adoptee directly with the petitioner, the petitioner acquires that parent's or guardian's right to legal and continuing physical custody of the adoptee and becomes a person responsible for the care and support of the adoptee, after the earliest of:

(1) The execution of consent by the parent or guardian who placed the adoptee;

(2) The filing of a petition for adoption by the petitioner; or

(3) The execution of a document by a parent or guardian having legal and physical custody of a minor temporarily transferring custody to the petitioner, pending the execution of a consent.

"§ 48-3-502. *Agency entitled to custody in placement by agency.*

(a) Unless the court orders otherwise, during a proceeding for adoption in which an agency places the adoptee with the petitioner:

(1) The agency retains legal but not physical custody of the adoptee until the adoption decree becomes final; but

(2) The agency may delegate to the petitioner responsibility for the care and support of the adoptee.

(b) Before a decree of adoption becomes final, the agency may for cause petition the court to dismiss the adoption proceeding and to restore full legal and physical custody of the minor to the agency; and the court may grant the petition on finding that it is in the best interest of the minor.

"Part 6. Consent to Adoption.

"§ 48-3-601. *Persons whose consent to adoption is required.*

Unless consent is not required under G.S. 48-3-603, a petition to adopt a minor may be granted only if consent to the adoption has been executed by:

(1) The minor to be adopted if 12 or more years of age;

(2) In a direct placement, by:

a. The mother of the minor;

b. Any man who may or may not be the biological father of the minor but who:
   1. Is or was married to the mother of the minor if the minor was born during the marriage or within 280 days after the marriage is terminated or the parties have separated pursuant to a written separation agreement or an order of separation entered under Chapters 50 or 50B of the General Statutes or a similar order of separation entered by a court in another jurisdiction;
   2. Attempted to marry the mother of the minor before the minor's birth, by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the minor is born during the attempted marriage, or within 280 days after the attempted marriage is terminated by annulment, declaration of invalidity, divorce, or, in the absence of a judicial proceeding, by the cessation of cohabitation;
   3. Before the filing of the petition, has legitimated the minor under the law of any state;
   4. Before the filing of the petition, has acknowledged his paternity of the minor and
      I. Is obligated to support the minor under written agreement or by court order;
      II. Has provided, in accordance with his financial means, reasonable and consistent payments for the support of the biological mother during or after the term of pregnancy, or the support of the minor, or both, which may include the payment of medical expenses, living expenses, or other tangible means of support, and has regularly visited or communicated, or attempted to visit or communicate with the biological mother during or after the term of pregnancy, or with the minor, or with both; or
      III. After the minor's birth but before the minor's placement for adoption or the mother's relinquishment, has married or attempted to marry the mother of the minor by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; or
   5. Before the filing of the petition, has received the minor into his home and openly held out the minor as his biological child; or
   6. Is the adoptive father of the minor; and

c. A guardian of the minor; and

(3) In an agency placement by:

a. The agency that placed the minor for adoption; and

b. Each individual described in subdivision (2) of this section who has not relinquished the minor pursuant to Part 7 of Article 3 of this Chapter.

"§ 48-3-602. *Consent of incompetent parents.*

If a parent as described in G.S. 48-3-601 has been adjudicated incompetent, then the court shall appoint a guardian ad litem for that parent and a guardian ad litem for the child to make a full investigation as to whether the adoption should proceed. The investigation shall include an evaluation of the parent's current condition and any reasonable likelihood that the parent will be restored to competency, the relationship between the child and the incompetent parent, alternatives to adoption, and any other relevant fact or circumstance. If the court determines after a hearing on the matter that it will be in the best interest of the child for the adoption to proceed, the court shall order the guardian ad litem of the parent to execute a consent for that parent.

"§ 48-3-603. *Persons whose consent is not required.*

(a) Consent to an adoption of a minor is not required of a person or entity whose consent is not required under G.S. 48-3-601, or:

(1) An individual whose parental rights and duties have been terminated under Article 24B of Chapter 7A of the General Statutes or by a court of competent jurisdiction in another state;

(2) A man described in G.S. 48-3-601(2), other than an adoptive father, if (i) the man has been judicially determined not to be the father of the minor to be adopted, or (ii) another man has been judicially determined to be the father of the minor to be adopted;

(3) A parent for whose minor child a guardian has been appointed;

(4) An individual who has relinquished parental rights or guardianship powers, including the right to consent to adoption, to an agency pursuant to Part 7 of this Article;

(5) A man who is not married to the minor's birth mother and who, after the conception of the minor, has executed a notarized statement denying paternity or disclaiming any interest in the minor;

(6) A deceased parent or the personal representative of a deceased parent's estate; or

(7) An individual listed in G.S. 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within 30 days after the service of the notice.

(b) The court may issue an order dispensing with the consent of:

(1) A guardian or an agency that placed the minor upon a finding that the consent is being withheld contrary to the best interest of the minor; or

(2) A minor 12 or more years of age upon a finding that it is not in the best interest of the minor to require the consent.

"§ 48-3-604. *Execution of consent: timing.*

(a) A man whose consent is required under G.S. 48-3-601 may execute a consent to adoption either before or after the child is born.

(b) The mother of a minor child may execute a consent to adoption at any time after the child is born but not sooner.

(c) A guardian of a minor to be adopted may execute a consent to adoption at any time.

(d) An agency licensed by the Department or a county department of social services in this State that places a minor for adoption shall execute its consent no later than 30 days after being served with notice of the proceeding for adoption.

(e) A minor to be adopted who is 12 years of age or older may execute a consent at any time.

"§ 48-3-605. *Execution of consent: procedures.*

(a) A consent executed by a parent or guardian or by a minor to be adopted who is 12 years of age or older must conform substantially to the requirements in G.S. 48-3-606 and must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments.

(b) A parent who has not reached the age of 18 years shall have legal capacity to give consent to adoption and to release that parent's rights in a child, and shall be as fully bound as if the parent had attained 18 years of age.

(c) An individual before whom a consent is signed and acknowledged under subsection (a) of this section shall certify in writing that to the best of the individual's knowledge or belief, the parent, guardian, or minor to be adopted executing the consent:

(1) Read, or had read to him or her, and understood the consent;

(2) Signed the consent voluntarily;

(3) Received or was offered a copy of the consent; and

(4) Was advised that counselling services may be available through county departments of social services or licensed child-placing agencies.

(d) A consent by an agency must be executed by the executive head or another authorized employee and must be signed and acknowledged under oath in the presence of an individual authorized to administer oaths or take acknowledgments.

(e) A consent signed in another state or in another country in accord with the procedure of that state or country shall not be invalid solely because of failure to comply with the formalities set out in this Chapter.

(f) A consent to the adoption of an Indian child, as that term is defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., must meet the requirements of that Act.

"§ 48-3-606. *Content of consent; mandatory provisions.*

A consent required from a minor to be adopted, a parent, or a guardian under G.S. 48-3-601 must be in writing and state:

(1) The date and place of the execution of the consent;

(2) The name, date of birth, and permanent address of the individual executing the consent;

(3) The date of birth or the expected delivery date, the sex, and the name of the minor to be adopted, if known;

(4) That the individual executing the document is voluntarily consenting to the transfer of legal and physical custody to, and the adoption of the minor to be adopted by, the identified prospective adoptive parent;

(5) The name of a person and an address where any notice of revocation may be sent;

(6) That the individual executing the document understands that after the consent is signed and acknowledged in accord with the procedures set forth in G.S. 48-3-605, it may be revoked in accord with G.S. 48-3-608, but that it is otherwise final and irrevocable and may not be withdrawn or set aside except under a circumstance set forth in G.S. 48-3-609;

(7) That the consent shall be valid and binding and is not affected by any oral or separate written agreement between the individual executing the consent and the adoptive parent;

(8) That the individual executing the consent has not received or been promised any money or anything of value for the consent, and has not received or been promised any money or anything of value in relation to the adoption of the child except for lawful payments that are itemized on a schedule attached to the consent;

(9) That the individual executing the consent understands that when the adoption is final, all rights and obligations of the adoptee's former parents or guardian with respect to the adoptee will be extinguished, and every aspect of the legal relationship between the adoptee and the former parent or guardian will be terminated;

(10) The name and address of the court, if known, in which the petition for adoption has been or will be filed;

(11) That the individual executing the consent waives notice of any proceeding for adoption;

(12) If the individual executing the document is the minor to be adopted or the person placing the minor for adoption, a statement that the adoption shall be by a specific named adoptive parent;

(13) If the individual executing the document is the person placing the minor for adoption, that the individual executing the consent has provided the prospective adoptive parent, or the prospective adoptive parent's attorney, with the written document required by G.S. 48-3-205; and

(14) That the person executing the consent has:

a. Received or been offered an unsigned copy of the consent;

b. Been advised that counselling services may be available through county departments of social services or licensed child-placing agencies; and

c. Been advised of the right to employ independent legal counsel.

"§ 48-3-607. *Consequences of consent.*

(a) A consent executed pursuant to G.S. 48-3-605 and G.S. 48-3-606 may be revoked as provided in G.S. 48-3-608. A consent is otherwise final and irrevocable except under a circumstance set forth in G.S. 48-3-609.

(b) Except as provided in subsection (c) of this section, the consent of a parent, guardian, or agency that placed a minor for adoption pursuant to Part 2 of this Article vests legal and physical custody of the minor in the prospective adoptive parent and empowers this individual to petition the court to adopt the minor.

(c) Any other parental right and duty of a parent who executed a consent is not terminated until either the decree of adoption becomes final or the relationship of parent and child is otherwise terminated, whichever comes first. Until termination, the minor remains the child of a parent who executed a consent for purposes of any inheritance, succession, insurance, arrears of child support, and other benefit or claim that the minor may have from, through, or against the parent.

"§ 48-3-608. *Revocation of consent.*

(a) A consent to the adoption of an infant who is in utero or is three months old or less at the time the consent is given may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays. A consent to the adoption of any other minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the revocation period falls on a weekend or North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the consent may revoke by giving written notice to the person specified in the consent. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the person to whom consent was given at the address specified in the consent.

(b) In a direct placement, if:

(1) A preplacement assessment is required, and

(2) Placement occurs before the preplacement assessment is given to the parent or guardian who is placing the minor,

then that individual's time under subsection (a) of this section to revoke any consent previously given shall be either five business days after the date the individual receives the preplacement assessment or the remainder of the time provided in subsection (a) of this section, whichever is longer. The date of receipt is the earlier of the date of actual receipt or the date established pursuant to G.S. 48-3-307.

(c) If a person who has physical custody places the minor with the prospective adoptive parent and thereafter revokes a consent pursuant to this section, the prospective adoptive parent shall, immediately upon request, return the minor to that person. The revocation restores the right to physical custody and any right to legal custody to the person who placed the minor and divests the prospective adoptive parent of any right to legal or physical custody and any further responsibility for the care and support of the minor. In any subsequent proceeding, the court shall award reasonable attorneys' fees to the person who revoked if the prospective adoptive parent fails upon request to return the minor.

(d) If a person other than a person described in subsection (c) of this section revokes a consent pursuant to this section and this person's consent

is required, the adoption cannot proceed until another consent is obtained or the person's parental rights are terminated. The person who revoked consent is not thereby entitled to physical custody of the minor. If the minor whose consent is required revokes consent, the county department of social services shall be notified for appropriate action.

(e) A second consent to adoption by the same adoptive parents is irrevocable.

"§ 48-3-609. *Challenges to validity of consent.*

(a) A consent shall be void if:

(1) Before the entry of the adoption decree, the individual who executed the consent establishes by clear and convincing evidence that it was obtained by fraud or duress;

(2) The prospective adoptive parent and the individual who executed the consent mutually agree in writing to set it aside;

(3) The petition to adopt is voluntarily dismissed with prejudice; or

(4) The court dismisses the petition to adopt and no appeal has been taken, or the dismissal has been affirmed on appeal and all appeals have been exhausted.

(b) If the consent of an individual who previously had legal and physical custody of a minor becomes void under subsection (a) of this section and no grounds exist under G.S. 48-3-603 for dispensing with this individual's consent, the court shall order the return of the minor to the custody of that individual and shall dismiss any pending adoption proceeding. If the court has reasonable cause to believe that the return will be detrimental to the minor, the court shall not order the return of the minor but shall notify the county department of social services for appropriate action.

(c) If the consent of an individual who did not previously have physical custody of a minor becomes void under subsection (a) of this section and no ground exists under G.S. 48-3-603 for dispensing with this individual's consent, the court shall dismiss any pending proceeding for adoption. If return of the minor is not ordered under subsection (b) of this section, the court shall notify the county department of social services for appropriate action.

"§ 48-3-610. *Collateral agreements.*

If a person executing a consent and the prospective adoptive parent or parents enter into an agreement regarding visitation, communication, support, and any other rights and duties with respect to the minor, this agreement shall not be a condition precedent to the consent itself, failure to perform shall not invalidate a consent already given, and the agreement itself shall not be enforceable.

"Part 7. Relinquishment of Minor for Adoption.

"§ 48-3-701. *Individuals who may relinquish minor; timing.*

(a) A parent or guardian may relinquish all parental rights or guardianship powers, including the right to consent to adoption, to an agency. If both parents are married to each other and living together, both parents must act jointly in relinquishing a child to an agency.

(b) The mother of a minor child may execute a relinquishment at any time after the child is born but not sooner. A man whose consent is

required under G.S. 48-3-601 may execute a relinquishment either before or after the child is born.

(c) A guardian may execute a relinquishment at any time.

"*§ 48-3-702. Procedures for relinquishment.*

(a) A relinquishment executed by a parent or guardian must conform substantially to the requirements in this Part and must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments.

(b) The provisions of G.S. 48-3-605(b), (c), (e), and (f), also apply to a relinquishment executed under this Part, except that an individual before whom a relinquishment is signed and acknowledged shall also certify that an employee of the agency to which the minor is being relinquished signed a statement indicating the agency's willingness to accept the relinquishment.

"*§ 48-3-703. Content of relinquishment; mandatory provisions.*

(a) A relinquishment executed by a parent or guardian under G.S. 48-3-701 must be in writing and state:

(1) The date and place of the execution of the relinquishment;

(2) The name, date of birth, and permanent address of the individual executing the relinquishment;

(3) The date of birth or the expected delivery date, the sex, and the name of the minor, if known;

(4) The name and address of the agency to whom the minor is being relinquished;

(5) That the individual voluntarily consents to the permanent transfer of legal and physical custody of the minor to the agency for the purposes of adoption, and

a. The placement of the minor for adoption with a prospective adoptive parent selected by the agency; or

b. The placement of the minor for adoption with a prospective adoptive parent selected by the agency and agreed upon by the individual executing the relinquishment;

(6) That the individual executing the relinquishment understands that after the relinquishment is signed and acknowledged in the manner provided in G.S. 48-3-702, it may be revoked in accord with G.S. 48-3-706 but that it is otherwise final and irrevocable except under the circumstances set forth in G.S. 48-3-707;

(7) That the relinquishment shall be valid and binding and shall not be affected by any oral or separate written agreement between the individual executing the consent and the agency;

(8) That the individual executing the relinquishment understands that when the adoption is final, all rights and duties of the individual executing the relinquishment with respect to the minor will be extinguished and all other aspects of the legal relationship between the minor child and the parent will be terminated;

(9) That the individual executing the relinquishment has not received or been promised any money or anything of value for the relinquishment of the minor, and has not received or been promised any money or anything of value in relation to the relinquishment or the adoption of the minor except for lawful

payments that are itemized on a schedule attached to the relinquishment;

(10) That the individual executing the relinquishment waives notice of any proceeding for adoption;

(11) That the individual executing the relinquishment has provided the agency with the written document required by G.S. 48-3-205, or that the individual has provided the agency with signed releases that will permit the agency to compile the information required by G.S. 48-3-205; and

(12) That the individual executing the relinquishment has:

a. Received or been offered an unsigned copy of the relinquishment;

b. Been advised that counseling services are available through the agency to which the relinquishment is given; and

c. Been advised of the right to employ independent legal counsel.

"§ 48-3-704. *Content of relinquishment; optional provisions.*

In addition to the mandatory provisions listed in G.S. 48-3-703, a relinquishment may also state that the relinquishment may be revoked upon notice by the agency that an adoption by a specific prospective adoptive parent, named or described in the relinquishment is not completed, or if the agency and the person relinquishing the minor mutually agree to rescind the relinquishment before placement with a prospective adoptive parent occurs.

"§ 48-3-705. *Consequences of relinquishment.*

(a) A relinquishment executed pursuant to G.S. 48-3-702 through G.S. 48-3-704 may be revoked as provided in G.S. 48-3-706 and is otherwise final and irrevocable except under a circumstance set forth in G.S. 48-3-707.

(b) Upon execution, a relinquishment by a parent or guardian entitled under G.S. 48-3-201 to place a minor for adoption:

(1) Vests legal and physical custody of the minor in the agency; and

(2) Empowers the agency to place the minor for adoption with a prospective adoptive parent selected in the manner specified in the relinquishment.

(c) A relinquishment terminates:

(1) Any right and duty of the individual who executed the relinquishment with respect to the legal and physical custody of the minor;

(2) The right to consent to the minor's adoption; and

(3) The duty to support the minor.

(d) Except as provided in subsection (c) of this section, parental rights and duties of a parent who executed a relinquishment are not terminated until the decree of adoption becomes final or the parental relationship is otherwise legally terminated, whichever occurs first. Until termination the minor remains the child of a parent who executed a relinquishment for purposes of any inheritance, succession, insurance, arrears of child support, and other benefit or claim that the minor may have from, through, or against the parent.

"§ 48-3-706. *Revocation of relinquishments.*

(a) A relinquishment of an infant who is in utero or is three months old or less at the time the relinquishment is executed may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays. A relinquishment of any other minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the period falls on a weekend or a North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the relinquishment may revoke by giving written notice to the agency to which the relinquishment was given. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the agency at the agency's address as given in the relinquishment.

(b) If a person who has physical custody relinquishes a minor and thereafter revokes a relinquishment pursuant to this section, the agency shall upon request return the minor to that person. The revocation restores the right to physical custody and any right to legal custody to the person who relinquished the minor and divests the agency of any right to legal or physical custody and any further responsibility for the care and support of the minor. In any subsequent proceeding, the court may award the person who revoked reasonable attorneys' fees from a prospective adoptive parent with whom the minor was placed who refuses to return the minor and from the agency if the agency fails to cooperate in securing the minor's return.

(c) If a person other than a person described in subsection (b) of this section revokes a relinquishment pursuant to this section and this person's consent is required, the agency may not give consent for the adoption and the adoption cannot proceed until another relinquishment or a consent is obtained or parental rights are terminated. The person who revoked the relinquishment is not thereby entitled to physical custody of the minor.

(d) A second relinquishment for placement with the same adoptive parent selected by the agency and agreed upon by the person executing the relinquishment, or a second general relinquishment for placement by the agency with any adoptive parent selected by the agency, is irrevocable.

"§ 48-3-707. *Challenges to validity of relinquishments.*

(a) A relinquishment shall become void if, before the entry of the adoption decree, the individual who executed the relinquishment establishes by clear and convincing evidence that it was obtained by fraud or duress.

(b) A relinquishment may be revoked upon the happening of a condition expressly provided for in the relinquishment pursuant to G.S. 48-3-704.

(c) If the relinquishment of an individual who previously had legal and physical custody of a minor is set aside under subsection (a) or (b) of this section and no grounds exist under G.S. 48-3-603 for dispensing with this individual's consent, the court shall order the return of the minor to the custody of that individual, and shall dismiss any pending proceeding for adoption. If the court has reasonable cause to believe that the return will be detrimental to the minor, the court shall not order the return of the minor but shall notify the county department of social services for appropriate action.

(d) If the relinquishment of an individual who did not previously have physical custody of a minor is set aside under subsection (a) or (b) of this section, and no grounds exist under G.S. 48-3-603 for dispensing with this individual's consent, the court shall dismiss any pending proceeding for adoption. If return of the minor is not ordered under subsection (c) of this section, the court shall notify the county department of social services for appropriate action.

"ARTICLE 4.

"Adoption of a Minor Stepchild by Stepparent.

"§ 48-4-100. *Application of Article.*

This Article shall apply to the adoption of minors by their stepparents.

"§ 48-4-101. *Who may file a petition to adopt a minor stepchild.*

A stepparent may file a petition under this Article to adopt a minor who is the child of the stepparent's spouse if:

(1) The parent who is the spouse has legal and physical custody of the child, and the child has resided primarily with this parent and the stepparent during the six months immediately preceding the filing of the petition;

(2) The spouse is deceased or incompetent but, before dying or being adjudicated incompetent, had legal and physical custody of the child, and the child has resided primarily with the stepparent during the six months immediately preceding the filing of the petition; or

(3) For cause, the court permits a stepparent who does not meet the requirements of subdivisions (1) and (2) of this section to file a petition.

"§ 48-4-102. *Consent to adoption of stepchild.*

Except under circumstances described in G.S. 48-3-603, a petition to adopt a minor stepchild may be granted only if consent to the adoption has been executed by the adoptee if 12 or more years of age; and

(1) The adoptee's parents as described in G.S. 48-3-601; or

(2) Any guardian of the adoptee.

The consent of an incompetent parent may be given pursuant to the procedures in G.S. 48-3-602.

"§ 48-4-103. *Execution and content of consent to adoption by stepparent.*

(a) A consent executed by a parent who is the stepparent's spouse:

(1) Must be signed and acknowledged before an individual authorized to administer oaths or take acknowledgments;

(2) Must be in writing and state or contain:

a. The statements required by G.S. 48-3-606, except for those required by subdivisions (4), (9), (12), and (13) of that section;

b. That the parent executing the consent has legal and physical custody of the child and is voluntarily consenting to the adoption of the child by the stepparent;

c. That the adoption will not terminate the legal relation of parent and child between the parent executing the consent and the child; and

d. That the adoption will terminate the legal relation of parent and child between the adoptee and the adoptee's other parent, including all right of the adoptee to inherit as a child from or through the other parent, and will extinguish any existing court order of custody, visitation, or communication with the adoptee, except that the other parent will remain liable for past-due child support payments unless legally released from this obligation.

(b) A consent executed by a minor stepchild's parent who is not the stepparent's spouse:

(1) Must be signed and acknowledged before an individual authorized to administer oaths or take acknowledgments; and

(2) Must be in writing and state or contain:

a. The statements required by G.S. 48-3-606, except for those required by subdivisions (4), (9), (12), and (13) of that section;

b. That the parent executing the consent is voluntarily consenting to:

1. The transfer of any right the parent has to legal or physical custody of the child to the child's other parent and stepparent, and

2. The adoption of the child by the stepparent; and

c. That the adoption will terminate the legal relation of parent and child between the adoptee and the parent executing the consent, including all rights of the adoptee to inherit as a child from or through the parent, and will extinguish any court order of custody, visitation, or communication with the adoptee, except that the parent executing the consent will remain liable for past-due child support payments unless legally released from this obligation.

(c) A consent executed by the guardian of a minor stepchild:

(1) Must be signed and acknowledged before an individual authorized to administer oaths or take acknowledgments; and

(2) Must be in writing and state or contain:

a. The statements required by G.S. 48-3-606, except for those required by subdivisions (4), (9), (12), and (13) of that section;

b. A statement that the guardian is voluntarily consenting to:

1. The transfer of any right the guardian has to legal or physical custody of the adoptee to the adoptive stepparent; and

2. The adoption of the adoptee by the stepparent;

c. That the adoption will not terminate the legal relation of parent and child between a parent who is or was the stepparent's spouse and the adoptee;

d. That the adoption will terminate the legal relation of parent and child between the adoptee and a parent who is not or has not been the stepparent's spouse, including all right of the adoptee to inherit from or through that parent, and will extinguish any court order of custody, visitation, or

communication with the adoptee, except that a parent whose relation to the adoptee is terminated by the adoption will remain liable for past-due child support payments unless legally released from this obligation.

(d) G.S. 48-3-608(a) applies to consents executed pursuant to subsections (a) through (c) of this section. Unless so revoked, the consent is final and irrevocable except under a circumstance set forth in G.S. 48-3-609.

(e) A consent executed by an adoptee in a proceeding for adoption by a stepparent must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments. The minor may revoke the consent at any time before the decree is entered by filing written notice with the court in which the petition is pending.

"*§ 48-4-104. Report to the court.*

Whenever a petition is filed for adoption of a minor stepchild by a stepparent, the court shall order an agency to prepare a report to the court as provided in Part 5 of Article 2 of this Chapter to determine if the adoption will be in the adoptee's best interest.

"*§ 48-4-105. Visitation awards to grandparents pursuant to Chapter 50 of the General Statutes.*

(a) An adoption under this Article does not terminate or otherwise affect visitation rights awarded to a biological grandparent of a minor pursuant to G.S. 50-13.2.

(b) An adoption under this Article does not affect the right of a biological grandparent to petition for visitation rights pursuant to G.S. 50-13.2A or G.S. 50-13.5(j).

"ARTICLE 5.

"Adoption of Adults.

"*§ 48-5-100. Application of Article.*

This Article shall apply to the adoption of adults, including married and emancipated minors.

"*§ 48-5-101. Who may file for a petition to adopt an adult.*

(a) An adult may adopt another adult, except for the spouse of the adopting adult, pursuant to this Article.

(b) If a prospective adoptive parent is married, both spouses must join in the petition unless the prospective adoptive parent is the adoptee's stepparent or unless the court waives this requirement for cause.

"*§ 48-5-102. Consent to adoption.*

(a) Consent to the adoption of an adult is required only of:

(1) The adult being adopted; and

(2) The spouse of the petitioner in an adoption by the adult's stepparent, unless the court waives this requirement for cause.

(b) The consent of the adult being adopted must:

(1) Be in writing and be signed and acknowledged before an individual authorized to administer oaths or take acknowledgments;

(2) State that the adult agrees to assume toward the adoptive parent the legal relation of parent and child and to have all of the rights and be subject to all of the duties of that relationship; and

(3) State that the adult understands the consequences the adoption may have for rights of inheritance, property, or support, including the

loss of nonvested inheritance rights which existed prior to the adoption and the acquisition of new inheritance rights.

(c) The consent of the spouse of the petitioner in a stepparent adoption:

(1) Must be in writing and be signed and acknowledged before an individual authorized to administer oaths or take acknowledgments; and

(2) Must state that the spouse:

a. Consents to the proposed adoption;

b. Understands that the adoption may diminish the amount the spouse might take from the petitioner through intestate succession or by dissenting to the petitioner's will and may also diminish the amount of other entitlements that may become due the spouse and any other children of the petitioner through the petitioner; and

c. Believes the adoption will be in the best interest of the adult being adopted and the prospective adoptive parent.

(d) Anyone who gives a consent under this Article may revoke the consent at any time before the entry of the decree of adoption by delivering a written notice of revocation to the individual to whom the consent was given. If a petition to adopt has been filed, the notice of revocation shall also be filed with the clerk of court in the county where the petition is pending.

"§ *48-5-103. Adoption of incompetent adults.*

(a) If an adult being adopted has been adjudicated incompetent, then that adult's guardian shall have authority to consent in place of that adult.

(b) The consent of the guardian must:

(1) Be in writing and signed and acknowledged before an individual authorized to administer oaths or take acknowledgments;

(2) State that the guardian understands that the adoption will terminate the legal relationship of parent and child between the adult being adopted and the adult's former parents, including all rights of the adult to inherit as a child from or through the former parents, unless the adoption is by a stepparent, in which case the adoption will terminate the legal relationship of parent and child between the adult and the parent who is not married to the stepparent but will have no effect on the relationship between the adult and the parent who is married to the stepparent;

(3) State that the guardian understands that the adoption will create the legal relationship of parent and child between the adult and the petitioner, including the right of inheritance by, from, and through each other;

(4) State that the guardian consents to the proposed adoption and believes the adoption will be in the best interest of the adult; and

(5) State that the guardian understands that the adoption will not terminate the guardian's rights, duties, and powers.

(c) In any adoption of an adult who has been adjudicated incompetent, the court shall appoint a guardian ad litem other than the guardian to investigate and report to the court on the proposed adoption.

"ARTICLE 6.

"Adoption by a Former Parent.

"§ 48-6-100. *Application of Article.*

This Article shall apply to the adoption of adoptees by a former parent.

"§ 48-6-101. *Readoption under other Articles.*

A former parent may readopt a minor adoptee pursuant to Article 3 of this Chapter or, if applicable, Article 4 of this Chapter. A former parent may readopt an adult adoptee pursuant to Article 5 of this Chapter.

"§ 48-6-102. *Readoption after a stepparent adoption.*

(a) In addition to the methods set out in G.S. 48-6-101, a former parent may petition pursuant to this section to readopt an adoptee adopted by a stepparent.

(b) The petitioner's spouse shall not join the petition.

(c) Consent to the readoption must be executed by:

(1) The adoptee, if 12 or more years of age;

(2) The petitioner's spouse, if any;

(3) The adoptee's adoptive parent, if the adoptee is a minor;

(4) The adoptee's parent who is or was the spouse of the adoptive parent, if the adoptee is a minor; and

(5) Any guardian of the adoptee.

(d) The consent executed by the adoptee shall conform to the requirements of G.S. 48-4-103(e).

(e) The consent executed by the petitioner's spouse shall conform to the requirements of G.S. 48-5-102(c).

(f) The consent executed by the adoptive parent shall conform to the requirements of G.S. 48-4-103(b).

(g) The consent of the adoptee's parent who was the spouse of the adoptive parent shall conform to the requirements of G.S. 48-4-103(a) except for those required by G.S. 48-4-103(a)(2)b.

(h) A consent executed by the guardian of a minor adoptee shall conform to the requirements of G.S. 48-4-103(c).

(i) An adoption under this section does not affect the relationship between the adoptee and the parent who was married to the adoptive parent.

(j) An adoption under this section does not terminate or otherwise affect any existing order of custody.

"ARTICLE 7. [Reserved]

"ARTICLE 8. [Reserved]

"ARTICLE 9.

"Confidentiality of Records and Disclosure of Information.

"§ 48-9-101. *Records defined.*

For purposes of this Article, 'records' means any petition, affidavit, consent or relinquishment, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, invoice, receipt, certificate, or other printed, written, microfilmed or microfiched, video-taped or tape-recorded material or electronic data processing records regardless of physical form or characteristics pertaining to a proceeding for adoption under this Chapter.

"§ 48-9-102. *Records confidential and sealed.*

(a) All records created or filed in connection with an adoption, except the decree of adoption, and on file with or in the possession of the court, an agency, the State, a county, an attorney, or other provider of professional

services, are confidential and may not be disclosed or used except as provided in this Chapter.

(b) During a proceeding for adoption, records shall not be open to inspection by any person except upon an order of the court finding that disclosure is necessary to protect the interest of the adoptee.

(c) When a decree of adoption becomes final, all records and all indices of records on file with the court, an agency, or this State shall be retained permanently and sealed. Sealed records shall not be open to inspection by any person except as otherwise provided in this Article.

(d) Records must be sent by the clerk of superior court to the Division in the following order:

(1) Within 10 days after the petition is filed with the clerk of the superior court, a copy of the petition giving the date of the filing of the original petition and the original of each consent and relinquishment must be filed by the clerk with the Division.

(2) Within 10 days after the decree of adoption is entered, the clerk must file with the Division the additional documents filed pursuant to G.S. 48-2-305, any report to the court, any additional documents submitted and orders entered, and a copy of the final order.

(e) The Division must cause the papers and reports related to the proceeding to be permanently indexed and filed.

(f) The Division shall transmit a report of the adoption of a minor and any name change to the State Registrar if the minor was born in this State, or to the appropriate official responsible for issuing birth certificates or their equivalent if the minor was not born in this State.

(g) In the adoption of an adult born in this State in which the name of the adoptee is changed, the clerk of superior court shall, within 10 days after the decree of adoption is entered, send the State Registrar a copy of the final order, any separate order of name change, and a report in a form acceptable to the State Registrar containing sufficient information for a new birth certificate. In the adoption of an adult who was not born in this State, the clerk shall transmit a copy of the final order and any other required information to the adoptee.

"§ 48-9-103. *Release of nonidentifying information.*

(a) An adoptive parent, an adoptee who is an adult at the time of the request, or a minor adoptee who is a parent or an expectant parent may request a copy of any document prepared pursuant to G.S. 48-3-205 and a copy of any additional nonidentifying health-related information about the adoptee's original family that has been submitted to a court, agency, or the Division. A minor seeking treatment pursuant to G.S. 90-21.1 may request that a copy of this information be sent to the treating physician.

(b) If a request under this section is made to the agency that placed the adoptee or prepared the report to the court, the agency shall furnish the individual making the request or the treating physician named by a minor making the request with a copy of any relevant report or information that is included in the sealed records of the agency. If a request under this section is made to the court that issued the decree of adoption, the court shall refer the individual to the Division, or, if known to the court, the agency that

placed the adoptee or prepared the report to the court. The Division may refer the individual to the agency that prepared the report to the court. If the agency no longer exists, the Division may furnish the information to an agency convenient to the requesting party.

(c) Any report or information released under this section shall be edited by the sender to exclude the name, address, or other information that could reasonably be expected to lead directly to the identity of an adoptee at birth or an adoptee's parent at the adoptee's birth or other member of the adoptee's original family and shall contain an express reference to the confidentiality provisions of this Chapter.

(d) An individual who is denied access to a report or information requested under this section may petition the clerk of original jurisdiction for review of the reasonableness of the denial.

(e) If the court or the agency receives information from an adoptee's former parent or from an adoptee's former relative about a health or genetic condition that may affect the health of the adoptee or the adoptee's child, an appropriate employee shall make a reasonable effort to contact and forward the information to an adoptee who is 18 or more years of age, or an adoptive parent of an adoptee who is under 18 years of age.

(f) Nothing in this section shall prohibit an agency from disclosing nonidentifying information about the adoptee's present circumstances, in the nature of information required under G.S. 48-3-205, to a former parent, an adult sibling, or the guardian of a minor sibling on request.

(g) The Department shall prescribe a reasonable procedure for verifying the identity, age, or other relevant characteristics of an individual who requests or provides a report or information under this section and the Department, the court, or agency may charge a reasonable fee for locating and making copies of a report or information.

(h) No request under this section shall be made to the State Registrar of Vital Statistics.

"*§ 48-9-104. Release of identifying information.*

No person or entity shall release from any records retained and sealed under this Article the name, address, or other information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105.

"*§ 48-9-105. Action for release of identifying and other nonidentifying information.*

(a) Any information necessary for the protection of the adoptee or the public in or derived from the records, including medical information not otherwise obtainable, may be disclosed to an individual who files a written motion in the cause before the clerk of original jurisdiction. In hearing the petition, the court shall give primary consideration to the best interest of the adoptee, but shall also give due consideration to the interests of the members of the adoptee's original and adoptive family.

(b) The movant must serve a copy of the motion, with written proof of service, upon the Department and the agency that prepared the report for the court. The clerk shall give at least five days' notice to the Department and

the agency of every hearing on this motion, whether the hearing is before the clerk or a judge of the district court; and the Department and the agency shall be entitled to appear and be heard in response to the motion.

(c) In determining whether cause exists for the release of the name or identity of an individual, the court shall consider:

(1) The reason the information is sought;

(2) Any procedure available for satisfying the petitioner's request without disclosing the name or identity of another individual, including having the court appoint a representative to contact the individual and request specific information;

(3) Whether the individual about whom identifying information is sought is alive;

(4) To the extent known, the preference of the adoptee, the adoptive parents, the adoptee's parents at birth, and other members of the adoptee's original and adoptive families, and the likely effect of disclosure on these individuals;

(5) The age, maturity, and expressed needs of the adoptee;

(6) The report or recommendation of any individual appointed by the court to assess the request for identifying information; and

(7) Any other factor relevant to an assessment of whether the benefit to the petitioner of releasing the information sought will be greater than the benefit to any other individual of not releasing the information.

(d) An individual who files a motion under this section may also ask the court to authorize the release by the State Registrar of a certified copy of the adoptee's original certificate of birth.

"*§ 48-9-106. Release of original certificate of birth.*

Upon receipt of a certified copy of a court order issued pursuant to G.S. 48-9-105 authorizing the release of an adoptee's original certificate of birth, the State Registrar shall give the individual who obtained the order a copy of the original certificate of birth with a certification that the copy is a true copy of a record that is no longer a valid certificate of birth.

"*§ 48-9-107. New birth certificates.*

(a) Upon receipt of a report of the adoption of a minor from the Division, or the documents required by G.S. 48-9-102(g) from the clerk of superior court in the adoption of an adult, or a report of an adoption from another state, the State Registrar shall prepare a new birth certificate for the adoptee that shall contain the adoptee's full adoptive name, sex, state of birth, and date of birth; the full name of the adoptive father, if applicable; the full maiden name of the adoptive mother, if applicable; and any other pertinent information consistent with this section as may be determined by the State Registrar. The new certificate shall contain no reference to the adoption of the adoptee and shall not refer to the adoptive parents in any way other than as the adoptee's parents.

(b) In an adoption by a stepparent, the State Registrar shall prepare a new birth certificate pursuant to subsection (a) of this section except:

(1) The adoptive parent and the parent whose relation with the adoptee remains unchanged shall be listed as the adoptee's mother and father on the new birth certificate; and

(2) The city and county of birth of the adoptee shall be the same on the new birth certificate as on the original certificate.

The names of the adoptee's parents shall not be changed as provided in subdivision (1) of this subsection if the petitioner, the petitioner's spouse, the adoptee if age 12 or older, and any living parent whose parental rights are terminated by the adoption jointly file a request that the parents' names not be changed with the court prior to the entry of the adoption decree. The Division shall send a copy of this request with its report to the State Registrar or other appropriate official in the adoption of a minor stepchild, and the clerk of superior court shall send a copy with the documents required by G.S. 48-9-102(g) in the adoption of an adult stepchild.

(c) The State Registrar shall seal the original certificate of birth and all records in the possession of that office pertaining to the adoption. These records shall not be unsealed except as provided in this Article. The State Registrar shall provide certified typed copies or abstracts of the new certificate of birth of an adoptee prepared pursuant to subsection (a) of this section to the adoptee, the adoptive parents, and the adoptee's spouse, brothers, and sisters. For purposes of this subsection, 'parent', 'brother', and 'sister' shall mean the adoptee's adoptive parent, brother, or sister and shall not mean a former parent, brother, or sister.

(d) At the time of preparing the new birth certificate pursuant to subsection (a) of this section, the State Registrar shall notify the register of deeds or appropriate official in the health department in the county of the adoptee's birth to remove the adoptee's birth certificate from the records and forward it to the State Registrar for retention under seal with the original certificate of birth in the State Registrar's office. The register of deeds shall also delete all index entries for that birth certificate. The State Registrar shall not issue copies of birth certificates for adoptees to registers of deeds. Only the State Registrar shall issue certified copies of such records, and these copies shall be prepared as prescribed in subsection (c) of this section.

(e) The State Registrar may by rule prescribe requirements for reports of adoptions from other states.

"§ 48-9-108. Restoration of original birth certificates if a decree of adoption is set aside.

If a final decree of adoption is set aside, the court shall send a certified copy of the order within 10 days after it becomes final to the State Registrar if the adoptee was born in this State or to the appropriate official responsible for issuing birth certificates or their equivalent if the adoptee was not born in this State. The court shall also send a copy to the Division. If the adoptee desires to have the adoptive name shown on the original birth certificate when it is restored, the order must include this directive. Upon receipt of such an order, the State Registrar shall seal the certificate issued under this section and restore the adoptee's original certificate of birth. This sealed file may subsequently be opened only by direction of a valid court order pursuant to G.S. 48-9-105 and G.S. 48-9-106.

"§ 48-9-109. Certain disclosures authorized.

Nothing in this Article shall be interpreted or construed to prevent an employee of a court, agency, or any other person from:

(1) Inspecting permanent, confidential, or sealed records, other than records maintained by the State Registrar, for the purpose of discharging any obligation under this Chapter;

(2) Disclosing the name of the court where a proceeding for adoption occurred, or the name of an agency that placed an adoptee, to an individual described in G.S. 48-9-104 who can verify his or her identity; or

(3) Disclosing or using information contained in permanent and sealed records, other than records maintained by the State Registrar, for statistical or other research purposes as long as the disclosure will not result in identification of a person who is the subject of the information and subject to any further conditions the Department may reasonably impose.

"ARTICLE 10.

"Prohibited Practices in Connection With Adoption.

"§ 48-10-101. *Prohibited activities in placement.*

(a) No one other than a person or entity specified in G.S. 48-3-201 may place a minor for adoption. No one other than a person or entity specified in G.S. 48-3-201, or an adoption facilitator, may solicit potential adoptive parents for children in need of adoption. No one other than an agency or an adoption facilitator, or an individual with a completed preplacement assessment that contains a finding that the individual is suitable to be an adoptive parent or that individual's immediate family, may solicit for adoption a potential adoptee.

(b) No one other than a county department of social services, an adoption facilitator, or an agency licensed by the Department in this State may advertise in any periodical or newspaper, or by radio, television, or other public medium, that any person or entity will place or accept a child for adoption.

(c) A person who violates subsection (a) or (b) of this section is guilty of a Class 1 misdemeanor.

(d) The district court may enjoin any person from violating this section.

"§ 48-10-102. *Unlawful payments related to adoption.*

(a) Except as provided in G.S. 48-10-103, a person or entity may not pay or give, offer to pay or give, or request, receive or accept any money or anything of value, directly or indirectly, for:

(1) The placement of a minor for adoption;

(2) The consent of a parent, a guardian, or an agency to the adoption of a minor;

(3) The relinquishment of a minor to an agency for purposes of adoption; or

(4) Assisting a parent or guardian in locating or evaluating a potential adoptive parent or in transferring custody of a minor to the adoptive parent.

(b) A person who violates this section is guilty of a Class 1 misdemeanor. For each subsequent violation, a person is guilty of a Class H felony which may include a fine of not more than ten thousand dollars ($10,000).

(c) The district court may enjoin any person or entity from violating this section.

"§ 48-10-103. *Lawful payments related to adoption.*

(a) An adoptive parent, or another person acting on behalf of an adoptive parent, may pay the reasonable and actual fees and expenses for:

(1) Services of an agency in connection with an adoption;

(2) Medical, hospital, nursing, pharmaceutical, traveling, or other similar expenses incurred by a mother or her child incident to the pregnancy and birth or any illness of the adoptee;

(3) Counseling services for a parent or the adoptee that are directly related to the adoption and are provided by a licensed psychiatrist, psychologist, marital and family therapist, registered practicing counselor, certified social worker, fee-based practicing pastoral counselor or other licensed professional counselor, or an employee of an agency;

(4) Ordinary living expenses of a mother during the pregnancy and for no more than six weeks after the birth;

(5) Expenses incurred in ascertaining the information required under G.S. 48-3-205 about an adoptee and the adoptee's biological family;

(6) Legal services, court costs, and traveling or other administrative expenses connected with an adoption, including any legal service connected with the adoption performed for a parent who consents to the adoption of a minor or relinquishes the minor to an agency; and

(7) Preparation of the preplacement assessment and the report to the court.

(b) A birth parent, or another person acting on the parent's behalf, may receive or accept payments authorized in subsection (a) of this section; or a provider of a service listed in subsection (a) of this section may receive or accept payments for that service.

(c) A payment authorized by subsection (a) of this section may not be made contingent on the placement of the minor for adoption, relinquishment of the minor, consent to the adoption, or cooperation in the completion of the adoption. Except as provided in subsection (d) of this section, if the adoption is not completed, a person who has made payments authorized by subsection (a) of this section may not recover them; but neither is this person liable for any further payment unless the person has agreed in a signed writing with a provider of a service to make this payment regardless of the outcome of the proceeding for adoption.

(d) A prospective adoptive parent may seek to recover a payment if the parent or other person receives or accepts it with the fraudulent intent to prevent the proposed adoption from being completed.

(e) An agency may charge or accept a reasonable fee or other compensation from prospective adoptive parents. In assessing a fee or charge, the agency may take into account the income of adoptive parents and may use a sliding scale related to income in order to provide services to persons of all incomes.

"§ 48-10-104. *Failure to disclose nonidentifying information.*

An adoptive parent, an adoptee, or any person who is the subject of any information required under G.S. 48-3-205 or authorized for release under Article 9 of this Chapter may bring a civil action for equitable or monetary relief or both against a person who fraudulently or intentionally misrepresents or fails to disclose information required under G.S. 48-3-205 or Article 9 of this Chapter.

"*§ 48-10-105. Unauthorized disclosure of information.*

(a) Except as authorized in G.S. 48-3-205 or in Article 9 of this Chapter, no identifying or nonidentifying information contained in a report or records described therein may be disclosed by present or former employees or officials of the court, an agency, the State, a county, an attorney or other provider of professional services, or any person or entity who wrongfully obtains such a report or records.

(b) A person who knowingly makes an unauthorized disclosure of identifying information is guilty of a Class 1 misdemeanor.

(c) The district court may enjoin from further violations any person who makes an unauthorized disclosure.

(d) Notwithstanding the penalties provided in subsection (b) of this section, an individual who is the subject of any of this information may bring a civil action for equitable or monetary relief or both against any person or entity who makes an unauthorized disclosure of the information."

Sec. 3. G.S. 7A-289.23 reads as rewritten:

"*§ 7A-289.23. Jurisdiction.*

The district court shall have exclusive original jurisdiction to hear and determine any petition relating to termination of parental rights to any child who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. The parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. The fees of appointed counsel shall be borne by the Administrative Office of the Courts. In addition to the right to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:

(1) Where it is alleged that a parent's rights should be terminated pursuant to G.S. 7A-289.32(7); or

(2) Where the parent is under the age of 18 years.

The fees of the guardian ad litem shall be borne by the Administrative Office of the Courts when the court finds that the respondent is indigent. In other cases the fees of the court appointed guardian ad litem shall be a proper charge against the respondent, if the respondent does not secure private legal counsel. Provided that, before exercising jurisdiction under this Article the court shall find that it would have jurisdiction to make a child custody determination under the provisions of G.S. 50A-3. Provided further, that the clerk of superior court shall have jurisdiction for adoptions under the provisions of ~~G.S. 48-12~~ G.S. 48-2-100 and Chapter 48 of the General Statutes generally."

Sec. 4. G.S. 7A-289.27(a)(4) reads as rewritten:

"(4) Any county department of social services or licensed child-placing agency to whom a child has been released by one parent pursuant to ~~G.S. 48-9(a)(1);~~ Part 7 of Article 3 of Chapter 48 of the General Statutes; and".

Sec. 5. G.S. 7A-289.33(1) reads as rewritten:

"(1) If the child had been placed in the custody of or released for adoption by one parent to, a county department of social services or licensed child-placing agency and is in the custody of ~~such~~ the agency at the time of ~~such~~ the filing of the petition, including a petition filed pursuant to G.S. 7A-289.24(6), that agency shall, upon entry of the order terminating parental rights, acquire all of the rights for placement of ~~said~~ the child as ~~such~~ the agency would have acquired had the parent whose rights are terminated released the child to that agency pursuant to the provisions of ~~G.S. 48-9(a)(1),~~ Part 7 of Article 3 of Chapter 48 of the General Statutes, including the right to consent to the adoption of ~~such~~ the child."

Sec. 6. G.S. 7A-660(a) reads as rewritten:

"(a) The director of social services or the director of the licensed private child-placing agency shall promptly notify the clerk to calendar the case for review of the department's or agency's plan for the child at a session of court scheduled for the hearing of juvenile matters in any case where:

(1) One parent has surrendered a child for adoption under the provisions of ~~G.S. 48-9(a)(1)~~ Part 7 of Article 3 of Chapter 48 of the General Statutes and the termination of parental rights proceedings have not been instituted against the non-surrendering parent within six months of the surrender by the other parent, or

(2) Both parents have surrendered a child for adoption under the provisions of ~~G.S. 48-9(a)(1)~~ Part 7 of Article 3 of Chapter 48 of the General Statutes and that child has not been placed for adoption within six months from the date of the more recent parental surrender."

Sec. 7. G.S. 130A-93(d) reads as rewritten:

"(d) Copies, certified copies or abstracts of birth certificates of adopted persons shall be provided in accordance with G.S. ~~48-29,~~ 48-9-107."

Sec. 8. G.S. 130A-108 reads as rewritten:

"§ *130A-108. Certificate of identification for child of foreign birth.*

In the case of an adopted child born in a foreign country and having legal settlement in this State, the State Registrar shall, upon the presentation of a certified copy of the original birth certificate from the country of birth and a certified copy of the final order of adoption signed by the clerk of court or other appropriate official, prepare a certificate of identification for the child. The certificate shall contain the same information required by G.S. ~~48-29(a)~~ 48-9-107(a) for children adopted in this State, except that the country of birth shall be specified in lieu of the state of birth."

Sec. 9. G.S. 163-82.16(a) reads as rewritten:

"(a) Registrant's Duty to Report. -- If the name of a registrant is changed in accordance with G.S. ~~48-36,~~ 48-1-104, G.S. 50-12, or Chapter 101 of the General Statutes, or if a married registrant assumes the last name of the

registrant's spouse, the registrant shall not be required to re-register, but shall report the change of name to the county board not later than the last day for applying to register to vote for an election in G.S. 163-82.6. The registrant shall report the change on a form described in G.S. 163-82.3 or on a voter registration card described in G.S. 163-82.8 or in another written statement that is signed, contains the registrant's names, old and new, and the registrant's current residence address."

Sec. 10. The Revisor of Statutes shall cause to be printed with this act all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

Sec. 11. Nothing in this act shall affect the validity of an adoption completed or validated under any prior law.

Sec. 12. This act becomes effective July 1, 1996. Any petition for adoption filed prior to and still pending on the effective date of this act shall be completed in accordance with the law in effect immediately prior to the effective date of this act.

In the General Assembly read three times and ratified this the 19th day of July, 1995.

S.B. 606

CHAPTER 458

AN ACT TO PROVIDE FOR THE CREATION OF FACILITY AUTHORITIES AND TO ESTABLISH THE CENTENNIAL AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Article 20 of Chapter 160A of the General Statutes is amended by adding a new Part to read:

"Part 4. Facility Authorities.

"*§ 160A-480.1. Short title.*

This Part is the 'Facility Authority Act' and may be cited by that name.

"*§ 160A-480.2. Definitions.*

The following definitions apply in this Part:

(1) Authority. -- A Facility Authority.

(2) Credit facility. -- An agreement with a banking institution, an insurance institution, an investment institution, or other financial institution located inside or outside the United States of America that provides for prompt payment, whether at maturity, presentment, or tender for purchase, redemption, or acceleration, of part or all of the principal or purchase price, redemption premium, if any, and interest on a bond or note issued by the Authority and for repayment of the institution.

(3) Member. -- A person appointed to a facility authority.

(4) Par formula. -- A provision or formula to make periodic adjustments in the interest rate of a bond or note, including:

a. A provision for an adjustment to keep the purchase price of the bond or note in the open market as close to par as possible.

b. A provision for an adjustment based on one or more percentages of a prime rate or base rate that may vary or apply for specified periods of time.

c. Any other provision that does not materially and adversely affect the financial position of the Authority and the marketing of the bonds or notes at a reasonable interest cost to the Authority.

(5) Regional facility. -- A facility consisting of an arena, coliseum, or other buildings or both, or areas where sports, fitness, health, recreational, entertainment, or cultural activities can be conducted. The facility may be composed of buildings grouped into complexes or separated from each other and may include ancillary support facilities, such as those for administration, sports science, sports medicine, training, museums, meeting rooms and conference centers, accommodations, parking, and food services. The facility should be designed to attract to the State as many major regional, national, and international tournaments, events, championships, training centers, training camps, and headquarters for the governance of various sports, associations, and events as possible. The regional facility shall be constructed on land owned by the State.

"§ *160A-480.3. Creation of Authority; additional membership.*

(a) Creation. -- An authority may be created only by act of the General Assembly. An authority so created shall be a political subdivision of the State. The territorial jurisdiction of the authority shall be a county authorized by the General Assembly to levy a room occupancy tax and a prepared food and beverage tax, and where both those taxes have been levied.

(b) Membership. -- An authority shall have eight or 13 members. Members shall be chosen for terms as follows:

(1) Four shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority;

(2) Four shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority; and

(3) If the territorial jurisdiction of the authority is a county where the main campus of a constituent institution of The University of North Carolina is located, then:

a. Two members shall be appointed by the board of commissioners of that county;

b. Two members shall be appointed by the city council of the city with the largest population in the county, according to the most recent decennial federal census; and

c. One member shall be appointed jointly by the mayors of all the cities in that county.

The board of commissioners may not appoint a member of its board to serve on the authority.

Two of the initial appointments under subdivision (1) of this subsection, two of the initial appointments under subdivision (2) of this subsection, one of the initial appointments under subdivision (3)a. of this subsection, and one of the initial appointments under subdivision (3)b. of this section shall be for terms expiring July 1 of the second year after the year in which the authority is created. The remaining initial appointments shall be for terms expiring July 1 of the fourth year after the year in which the authority is created. Successors shall be appointed in the same manner for four-year terms. A member may be removed by the appointing authority for cause. Vacancies occurring in the membership of the authority shall be filled by the remaining members.

(c) Purpose. -- The purpose of an authority is to study, design, plan, construct, own, promote, finance, and operate a regional facility.

(d) Charter and Bylaws. -- The act creating an authority and any amendments to it is the Authority's charter. The charter of an authority shall include the name of the Authority. An authority may adopt bylaws which may do any one or more of the following:

(1) Limit the powers, duties, and functions that the Authority may exercise and perform.

(2) Prescribe the compensation and allowances not to exceed those provided by G.S. 93B-5, if any, to be paid to the members of the Authority.

(3) Contain rules for the conduct of Authority business and any other matter pertaining to the organization, powers, and functioning of the Authority that the members consider appropriate.

(e) Meetings. -- An authority shall meet at a time and place agreed upon by its members. The initial meeting may be called by any four members. At its first meeting, the members shall elect a chairperson and any other officers that the charter may specify or the members may consider advisable. The Authority shall then adopt bylaws for the conduct of its business.

(f) Fiscal Accountability. -- An authority is a public authority subject to the provisions of Article 3 of Chapter 159 of the General Statutes.

(g) Conflicts. -- If any member, officer, or employee of an Authority shall be:

(1) Interested either directly or indirectly; or

(2) An officer or employee of or have an ownership interest in any firm or corporation, not including units of local government, interested directly or indirectly,

in any contract with that Authority, the interest shall be disclosed to the Authority and shall be set forth in the minutes of the Authority. The member, officer, or employee having an interest shall not participate on behalf of the Authority in the authorization of such contract. Other provisions of law notwithstanding, failure to take any or all actions necessary to carry out the purposes of this subsection do not affect the validity of any bonds or notes issued under this Chapter.

"*§ 160A-480.4. Powers of an Authority.*

An Authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Part. These powers may include any one or more of the following:

(1) To apply for, accept, receive, and dispense funds and grants made available to it by the State or any of its agencies or political subdivisions, the United States, any member unit, or any private entity.

(2) To study, design, plan, construct, own, and operate a regional facility.

(3) To employ consultants and employees as may be required in the judgment of the Authority, to fix and pay their compensation from funds available to the Authority. In employing consultants, the Authority shall promote participation by minority businesses.

(4) To contract with any public or private entity, and The University of North Carolina or any constituent institution of The University of North Carolina may enter into any such contract if the function is one The University of North Carolina or any constituent institution of The University of North Carolina could undertake separately.

(5) To adopt bylaws for the regulation of its affairs and the conduct of its business, and to adopt rules in connection with the performance of its functions and duties.

(6) To adopt an official seal.

(7) To acquire and maintain administrative offices.

(8) To sue and be sued in its own name, and to plead and be impleaded.

(9) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money.

(10) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any real or personal property or interest therein.

(11) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any of these purposes with respect to, any real or personal property or interest therein.

(12) Subject to the provisions of this Part, to pledge, assign, mortgage, or otherwise grant a security interest in any real or personal property or interest therein, including a leasehold interest, including the right and power to pledge, assign, or otherwise grant a security interest in any money, rents, charges, or other revenues and any proceeds derived by the Authority from any and all sources.

(13) Subject to the provisions of this Part, to borrow money to finance part or all of a regional facility, to issue revenue bonds or notes, to refund any revenue bonds or notes issued by the Authority, or to provide funds for other corporate purposes of the Authority.

(14) To use officers, employees, agents, and facilities of units of local government or constituent institutions of The University of North

Carolina for purposes and upon the terms that are mutually agreeable between the Authority and the unit or institution.

(15) To develop and make data, plans, information, surveys, and studies of public facilities within the area where constituent institutions of The University of North Carolina are located, and to prepare and make recommendations in regard thereto.

(16) To set and collect fees and charges for the use of the regional facility.

(17) To pay for services rendered by underwriters, financial consultants, or bond attorneys in connection with the issuance of revenue bonds or notes of the Authority out of the proceeds of the bonds or notes. In employing consultants, underwriters, attorneys, and others, the Authority shall promote participation by minority businesses.

(18) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20.

"*§ 160A-480.5. Dissolution of Authority.*

The General Assembly may dissolve an authority if all bonds or notes issued by the Authority and all other obligations incurred by the Authority have been fully paid or satisfied. In such event any assets of the Authority shall become the property of the county authorized to levy a room occupancy and prepared food and beverage tax to be distributed to the Authority.

"*§ 160A-480.6. Construction contracts.*

Article 8 of Chapter 143 of the General Statutes applies to a construction contract of an Authority. An Authority may solicit bids on the basis of separate specifications for the branches or work described in G.S. 143-128(a) and on a single-prime contract basis and accept the lowest bid.

"*§ 160A-480.7. Seating at regional facility arena.*

The Authority shall ensure that at least fifty percent (50%) of the seats for an athletic event that is sponsored by a constituent institution of The University of North Carolina whose principal campus is in the territorial jurisdiction of the authority and is held at the arena of the regional facility are made available to students at that constituent institution and members of the general public.

"*§ 160A-480.8. Bonds.*

(a) Terms. -- An Authority may provide for the issuance, at one time or from time to time, of bonds or notes to carry out its corporate purposes. The principal of, the interest on, and any premium payable upon the redemption of the bonds or notes shall be payable from the proceeds of bonds or renewal notes, or, in the event bond or renewal note proceeds are not available, from any available revenues or other funds provided for this purpose. The bonds or notes of each issue shall be dated and may be made redeemable prior to maturity at the option of the Authority or otherwise, at one or more prices, on one or more dates, and upon the terms and conditions set by the Authority. The bonds or notes may also be made payable from time to time on demand or tender for purchase by the owner upon terms and conditions set by the Authority. Notes and bonds shall mature at times determined by the Authority, not exceeding 40 years from the date of issue. The Authority shall determine the form and the manner

of execution of the bonds or notes, and shall fix the denomination of the bonds or notes and the place of payment of principal and interest. In case an officer whose signature or a facsimile of whose signature appears on any bonds or notes ceases to be an officer before the delivery of the bond or note, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until delivery. The Authority may also provide for the authentication of the bonds or notes by a trustee or fiscal agent.

Bonds or notes may be issued under this Part without obtaining, except as otherwise expressly provided in this Part, the consent of any department, division, commission, board, body, bureau, or other agency of the State or of a political subdivision of the State, and without any other proceedings or conditions except as specifically required by this Part or the provisions of the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes.

Prior to the preparation of definitive bonds, the Authority may issue interim receipts or temporary bonds exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds or notes which have been mutilated, destroyed, or lost.

(b) Use of Proceeds. -- The proceeds of a bond or note shall be used solely for the purposes for which the bond or note was issued and shall be disbursed in accordance with the resolution authorizing the issuance of a bond or note and with any trust agreement securing the bond or note. If the proceeds of a bond or note of any issue, by reason of increased construction costs or error in estimates or otherwise, is less than the cost, additional bonds or notes may in like manner be issued to provide the amount of the deficiency.

(c) Security. -- Bonds or notes issued by an Authority may be secured in one or more of the following ways:

(1) By the revenues of the regional facility.

(2) By security interests in real or personal property or interest therein, including a leasehold interest, acquired with the proceeds of the bonds or notes or improved with the proceeds of the bonds or notes as described in subsection (e) of this section.

(3) With the approval of the county levying the tax, by receipts, if any, from a room occupancy and prepared food and beverage tax levied by a county and distributed to the Authority; provided, however, that any agreement or undertaking by a county to distribute receipts, if any, from the tax to the Authority may not obligate the county to exercise any power of taxation, or restrict the ability of the county to repeal the tax.

The security for the bonds or notes shall be specified in the resolution or trust instrument authorizing the bonds or notes.

(d) Revenues. -- The Authority may pledge to the payment of its revenue bonds or notes the revenues from the regional facility, including revenues from improvements, betterments, or extensions to the facility. The Authority may establish, maintain, revise, charge, and collect such rates, fees, rentals, or other charges for the use, services, and facilities of or

furnished by a regional facility and provide methods of collection of and penalties for nonpayment of these rates, fees, rentals, or other charges. Except as otherwise permitted, the rates, fees, rentals, and charges fixed and charged shall be in an amount that will produce sufficient revenues, with any other available funds, to meet the maintenance and operation expenses of the regional facility as well as any improvements and renewals and replacements to the facility, including reserves to pay the principal, interest, and redemption premium due, if any, on any bonds or notes secured by the facility, and to fulfill the terms of any agreements made by the Authority with the holders of bonds or notes secured by revenues of the facility.

(e) Security Interests. -- Bonds or notes may be secured by security interests in any real or personal property or interest therein, including a leasehold interest, either acquired with the proceeds of bonds or notes, or upon which improvements are provided from the proceeds of bonds or notes. The security interest may cover all real and personal property acquired or improved or any portion of the property, except that if the property subject to the security interest is a leasehold interest, the security interest is not to the fee simple title. The Authority is authorized to enter into deeds of trust, mortgages, security agreements, and similar instruments as shall be necessary to carry out the powers in this subsection. Bonds or notes may also be secured by security interests in any real or personal property conveyed to the Authority.

In the event the Authority fails to perform its obligations with respect to the bonds or notes and foreclosure or similar sale of property subject to a security interest occurs, a deficiency judgment may not be rendered against the Authority except to the extent that the deficiency is payable from either revenues from the regional facility or from any revenues dedicated by act of the General Assembly to the Authority.

(f) Issuance. -- The issuance of bonds or notes of the Authority is subject to the approval of the Local Government Commission. Upon the filing with the Local Government Commission of a resolution of the Authority requesting that its bonds or notes be sold, the Commission shall determine the manner in which the bonds or notes will be sold and the price or prices at which the bonds or notes will be sold. In determining whether to approve a proposed bond or note issue of the Authority, the Local Government Commission shall consider the criteria for approval of revenue bonds under G.S. 159-86. The Local Government Commission shall approve the proposed issue if it determines the bond or note issue will meet such criteria and will effect the purposes of this Part. With the approval of the Authority, the Local Government Commission shall sell the bonds or notes either at public or private sale in the manner and at the prices determined to be in the best interests of the Authority and to effect the purposes of this Part.

(g) Certification of Approval. -- Each bond or note that is represented by an instrument shall contain a statement signed by the Secretary of the Local Government Commission, or an assistant designated by the Secretary, certifying that the issuance of the bond or note has been approved under this Part. The signature may be a manual signature or a facsimile signature, as determined by the Local Government Commission. Each bond or note that is not represented by an instrument shall be evidenced by a writing relating

to the obligation that identifies the obligation or the issue of which it is a part, contains the signed statement certifying approval of the Local Government Commission that is required on an instrument, and is filed with the Local Government Commission. A certification of approval by the Local Government Commission is conclusive evidence that a bond or note complies with this Part.

(h) State Pledge. -- The State pledges to the holder of a bond or note issued under this Part that, as long as the bond or note is outstanding and unpaid, the State will not limit or alter the power the Authority had when the bond or note was issued in a way that impairs the ability of the Authority to produce revenues sufficient with other available funds to do all of the following:

(1) Maintain and operate the facility for which the bond or note was issued.

(2) Pay the principal of, interest on, and redemption premium, if any, of the bond or note.

(3) Fulfill the terms of an agreement with the holder.

The State further pledges to the holder of a bond or note issued under this Part that the State will not impair the rights and remedies of the holder concerning the bond or note.

(i) Investment Securities. -- All bonds and notes and interest coupons, if any, issued under this Part are made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code, as enacted in Chapter 25 of the General Statutes.

(j) Details of Bonds or Notes. -- In fixing the details of bonds or notes, the Authority may provide that the bonds or notes may:

(1) Be payable from time to time on demand or tender for purchase by the owner of the bond or note if a credit facility supports the bond or note, unless the Local Government Commission specifically determines that a credit facility is not required because the absence of a credit facility will not materially and adversely affect the financial position of the Authority and the marketing of the bonds or notes at a reasonable interest cost to the Authority.

(2) Be additionally supported by a credit facility.

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity.

(4) Be capital appreciation bonds.

(5) Bear interest at a rate or rates that may vary, including variations permitted pursuant to a par formula.

(6) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the Authority.

(k) Basis of Investment. -- In connection with or incidental to the acquisition or carrying of any investment relating to bonds, program of investment relating to bonds, or carrying of bonds, the Authority may, with the approval of the Local Government Commission, enter into a contract to place the investment or obligation of the Authority, as represented by the bonds, investment, or program of investment and the contract or contracts,

in whole or in part, on an interest rate, currency, cash flow, or other basis, including the following:

(1) Interest rate swap agreements, currency swap agreements, insurance agreements, forward payment conversion agreements, and futures.

(2) Contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, or stock or other indices.

(3) Contracts to exchange cash flows or a series of payments.

(4) Contracts to hedge payment, currency, rate, spread, or similar exposure, including interest rate floors or caps, options, puts, and calls.

The Authority may enter a contract of this type in connection with, or incidental to, entering into or maintaining any agreement that secures bonds. A contract shall contain the payment, security, term, default, remedy, and other terms and conditions the Board considers appropriate. The Authority may enter a contract of this type with any person after giving due consideration, where applicable, of the person's creditworthiness as determined by a rating by a nationally recognized rating agency or any other criteria the Board considers appropriate. In connection with, or incidental to, the issuance or carrying of bonds, or the entering of any contract described in this subsection, the Authority may enter into credit enhancement or liquidity agreements, with payment, interest rate, termination date, currency, security, default, remedy, and other terms and conditions as the Authority determines. Proceeds of bonds and any moneys set aside and pledged to secure payment of bonds or any of the contracts entered into under this subsection may be pledged to and used to service any of the contracts entered into under this section.

"*§ 160A-480.9. Trust agreement or resolution.*

In the discretion of the Authority, any bonds or notes issued under this Part may be secured by a trust instrument between the Authority and a bank or trust company or individual within the State, or a bank or a trust company outside the State, as trustee. The trust instrument or the resolution of the Authority authorizing the issuance of bonds or notes may pledge and assign all or any part of the revenues, funds, and other property provided for the security of the bonds, including proceeds from the sale of any project, or part thereof, insurance proceeds, and condemnation awards, and may convey or mortgage property to secure a bond issue as provided in this Part.

The revenues and other funds derived from the project, except any part thereof that may be necessary to provide reserves therefor, if any, shall be set aside at regular intervals as may be provided in the resolution or trust instrument in a sinking fund which may be thereby pledged to, and charged with, the payment of the principal of and the interest on the bonds or notes as they become due and of the redemption price or the purchase price of bonds retired by call or purchase as therein provided. This pledge shall be valid and binding from the time the pledge is made. The revenues so pledged and thereafter received by the Authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act,

and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Authority, irrespective of whether the parties have notice of the pledge. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the resolution or trust instrument. The resolution or trust instrument may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the resolution or trust instrument.

(2) Appointment of a receiver to manage the project and any other property mortgaged or assigned as security for the bonds.

(3) Foreclosure and sale of the project and any other property mortgaged or assigned as security for the bonds.

(4) Rights to bring and maintain other actions at law or in equity as may appear necessary or desirable to collect the amounts payable under, or to enforce the covenants made in, the security document.

It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depository of the proceeds of bonds, revenues, or other funds provided under this Part to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. All expenses incurred in carrying out the provisions of the resolution or trust instrument may be treated as a part of the cost of the project in connection with which bonds or notes are issued or as an expense of administration of the project.

The Authority may subordinate bonds or notes to any prior, contemporaneous, or future securities or obligations or lien, mortgage, or other security interest securing bonds or notes.

Any owner of bonds or notes issued under the provisions of this Part or any coupons appertaining thereto, and the trustee under any trust agreement securing or resolution authorizing the issuance of such bonds or notes, except to the extent the rights given may be restricted by the trust agreement or resolution, may either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under the trust agreement or resolution, or under any other contract executed by the Authority pursuant to this Chapter; and may enforce and compel the performance of all duties required by this Part or by the trust agreement or resolution by the Authority or by any officer of the Authority.

"*§ 160A-480.10. Trust funds.*

Notwithstanding any other provision of law to the contrary, all money received pursuant to the authority of this Part, whether as proceeds from the sale of bonds or notes or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Part. The resolution authorizing the issuance of, or the trust agreement securing, any bonds or notes may provide that any of these moneys may be temporarily invested and reinvested pending their disbursement and shall provide that any officer with

whom, or any bank or trust company with which, the moneys shall be deposited shall act as trustee of the moneys and shall hold and apply the moneys for the purpose hereof, subject to any regulations this Part and the resolution or trust agreement may provide. Any of these moneys may be invested as provided in G.S. 159-30, as it may be amended from time to time.

"*§ 160A-480.11. Faith and credit of State and units of local government not pledged.*

Bonds or notes issued under this Part shall not constitute a debt secured by a pledge of the faith and credit of the State or a political subdivision of the State and shall be payable solely from the revenues, property, and other funds pledged for their payment. The bonds or notes issued by an Authority shall contain a statement that the Authority is obligated to pay the bond or note or the interest on the bond or note only from the revenues, property, or other funds pledged for their payment and that neither the faith and credit nor the taxing power of the State or any political subdivision of the State is pledged as security for the payment of the principal of or the interest or premium on the bonds or notes.

"*§ 160A-480.12. Revenue refunding bonds.*

The Authority may issue refunding bonds or notes for one or more of the following purposes:

(1) Refunding any outstanding bonds or notes issued under this Part, including any redemption premium on the bonds or notes and any interest accrued or to accrue to the date of redemption.

(2) Constructing improvements, additions, extensions or enlargements of the project, or projects in connection with which the bonds or notes to be refunded have been issued.

(3) Paying all or any part of the cost of any additional project or projects.

Refunding bonds or notes shall be issued in accordance with the same procedures and requirements as bonds or notes. Refunding bonds issued under this section may be sold or exchanged for outstanding bonds or notes issued under this Part and, if sold, the proceeds of the refunding bonds may be applied, in addition to any authorized purposes, to the purchase, redemption, or payment of outstanding bonds or notes.

Pending the application of the proceeds of refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds or notes being refunded, and, if so provided or permitted in securing the same, to the payment of any interest on such refunding bonds and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

"*§ 160A-480.13. Bonds eligible for investment.*

Bonds and notes issued under this Part are hereby made securities in which all public officers, agencies, and public bodies of the State and its

political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds or notes are hereby made securities that may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision of the State is authorized by law. This section does not apply to any State pension or retirement fund or a pension or retirement fund of a political subdivision of the State.

"*§ 160A-480.14. Taxation of revenue bonds.*

Any bonds and notes issued by the Authority under the provisions of this Part shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes issued by an Authority under the provisions of this Part shall not be subject to taxation as to income.

"*§ 160A-480.15. Members and officers not liable.*

No member or officer of an Authority shall be subject to any personal liability or accountability by reason of the execution of any bonds or notes or the issuance of any bonds or notes."

Sec. 2. G.S. 120-123 is amended by adding a new subdivision to read:

"(64) A facility authority established under Part 4 of Article 20 of Chapter 160A of the General Statutes."

Sec. 3. G.S. 160A-460(2) reads as rewritten:

"(2) 'Unit,' or 'unit of local government' means a county, city, consolidated city-county, local board of education, sanitary district, facility authority created under Part 4 of this Article, or other local political subdivision, authority, or agency of local government."

Sec. 3.1. The Director of the Budget may allocate to the Centennial Authority any funds appropriated for the Centennial Center which have not been expended or obligated.

Sec. 3.2. Upon application of the Centennial Authority, with the approval only of the Governor, the State may lease to the Centennial Authority for a term of 99 years sufficient land for construction of the Centennial Center and employee and event parking on or adjacent to the site, at a rent of one dollar ($1.00) per year.

Sec. 4. There is hereby established the Centennial Authority, which is a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes. The territorial jurisdiction of the Centennial Authority, as provided by G.S. 160A-480.3(a), is Wake County.

Sec. 5. Chapter 594 of the 1991 Session Laws reads as rewritten:

"AN ACT TO AUTHORIZE WAKE COUNTY TO LEVY A ROOM OCCUPANCY TAX AND A PREPARED FOOD AND BEVERAGE TAX.

"Section 1. Intent. -- This act authorizes Wake County to levy a room occupancy tax and a prepared food and beverage tax.

"Sec. 2. Definitions. -- The definitions in G.S. 105-164.3 apply to this act to the extent they are not inconsistent with the provisions of this act. The following definitions also apply in this act:

(1) Centennial Authority. -- The Centennial Authority created by the General Assembly under Part 4 of Article 20 of Chapter 160A of the General Statutes.

(1a) Financing. -- Debt service, lease payments, or any other obligations or means of supporting capital costs, together with any related reserve requirements.

(2) Net proceeds. -- The gross proceeds of the taxes levied pursuant to this act less any refunds and the cost to the county of administering and collecting the taxes as provided in Sections 10 and 11 of this act.

(3) Prepared food and beverage. -- Any food or beverage to which a retailer has added value or has altered its state (other than by cooling alone) by preparing, combining, dividing, heating, or serving, in order to make the food or beverage available for immediate human consumption.

(3a) Regional facility. -- Defined in G.S. 160A-480.2.

(4) Retailer. -- A caterer or a retailer as defined in G.S. 105-164.3 as in effect on the effective date of this act.

(5) Taxable establishment. -- A hotel, motel, inn, tourist camp, or similar place that is subject to a room occupancy tax levied pursuant to this act and a retailer that sells prepared food or beverages and is subject to the prepared food and beverage tax levied pursuant to this act.

(6) Undesignated proceeds. -- Net proceeds distributed to the City of Raleigh and to Wake County and designated for use pursuant to Sections 10(b)(1)b., 10(b)(3), 11(1)b., 11(2), 12(1)a., 12(2)c. and d., 12(3)c. and d., and 13 of this act.

"Sec. 3. Sales and Use Tax Statutes. -- The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this act to the extent they are not inconsistent with the provisions of this act.

"Sec. 4. Occupancy Tax. -- The Wake County Board of Commissioners may, by resolution, levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to the State sales tax imposed under G.S. 105-164.4(a)(3). This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose or to accommodations furnished to the same person for at least 90 consecutive days. Before levying the tax authorized in this section, the board of commissioners must hold a public hearing on the tax. Notice of the public hearing shall be advertised at least 10 days, but not more than 25 days,

before the scheduled date of the hearing. The revision of this act by AN ACT TO PROVIDE FOR THE CREATION OF FACILITY AUTHORITIES AND TO ESTABLISH THE CENTENNIAL AUTHORITY does not affect the previous levying of the tax under this section, and no new hearings or resolutions are required.

Before a tax may be enacted pursuant to this section, Wake County and the City of Raleigh must enter into an interlocal agreement pursuant to Article 20 of Chapter 160A of the General Statutes. The agreement shall contain, at the minimum, the type and general location of all capital projects to be funded in any way by the proceeds of the tax levied under this section. The agreement shall also contain a preliminary schedule for the completion of any projects to be so funded. If the city and the county are unable to approve and execute the required agreement within three years after the effective date of this act, this section is repealed.

"Sec. 5. Prepared Food and Beverage Tax. -- The Wake County Board of Commissioners may, by resolution, levy a prepared food and beverage tax of up to one percent (1%) of the sales price of prepared food and beverages sold at retail for consumption on or off the premises by any retailer within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(1). Before levying the tax authorized in this section, the board of commissioners must hold a public hearing on the tax. Notice of the public hearing shall be advertised at least 10 days, but not more than 25 days, before the scheduled date of the hearing. The revision of this act by AN ACT TO PROVIDE FOR THE CREATION OF FACILITY AUTHORITIES AND TO ESTABLISH THE CENTENNIAL AUTHORITY does not affect the previous levying of the tax under this section, and no new hearings or resolutions are required.

Before a tax may be enacted pursuant to this section, Wake County and the City of Raleigh must enter into an interlocal agreement pursuant to Article 20 of Chapter 160A of the General Statutes. The agreement shall contain, at the minimum, the type and general location of all capital projects to be funded in any way by the proceeds of the tax levied under this section. The agreement shall also contain a preliminary schedule for the completion of any projects to be so funded. If the city and the county are unable to approve and execute the required agreement within three years after the effective date of this act, this section is repealed.

"Sec. 6. ~~Exemptions.~~ Exemptions and Refunds. -- (a) Exemptions. -- The prepared food and beverage tax does not apply to the following sales of prepared food and beverages:

(1) Prepared food and beverages served to residents in boarding houses and sold together on a periodic basis with rental of any sleeping room or lodging.
(2) Retail sales exempt from taxation under G.S. 105-614.13 on the effective date of this act.
(3) Retail sales through or by means of vending machines.
(4) Prepared food and beverages served by any taxable establishment subject to the occupancy tax levied pursuant to this act if the charge for the prepared food or beverages is included in a single, nonitemized sales price together with the charge for rental of a

room, lodging, or accommodation furnished by the taxable establishment.

(5) Prepared food and beverages furnished without charge by an employer to any employee.

(6) Retail sales by grocers or by grocery sections of supermarkets or other diversified retail establishments other than sales of prepared food and beverages in the delicatessen or similar department of the grocer or grocery section.

(b) Refunds. -- The county shall refund to a nonprofit or governmental entity the prepared food and beverage tax paid by the entity on eligible purchases of prepared food and beverages. A nonprofit or governmental entity's purchase of prepared food and beverages is eligible for a refund under this subsection if the entity is entitled to a refund under G.S. 105-164.14(b) or (c) of local sales and use tax paid on the purchase. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) apply to refunds to nonprofit entities; the time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and (d) apply to refunds to governmental entities. When an entity applies for a refund of the prepared food and beverage tax paid by it on purchases, it shall attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An applicant for a refund under this subsection shall provide any information required by the county to substantiate the claim.

"Sec. 7. Date of Levy. -- A tax levied under this act shall become effective on the date specified in the resolution or ordinance levying the tax. The levy of the prepared food and beverage tax may not become effective before January 1, 1993.

"Sec. 8. Collection. -- Every operator of a taxable establishment shall, on and after the effective date of the levy of a tax under this act, collect the tax. The tax shall be stated and charged separately from the rental charge or sales price, shall be shown separately on the taxable establishment's sales records, and shall be paid by the purchaser to the taxable establishment as trustee for and on account of the county. The tax shall be added to the rental charge or sales price and shall be passed on to and collected from the purchaser instead of being borne by the taxable establishment.

For the convenience of each retailer and to facilitate the administration of this act, the county shall determine the amount to be added to the sales price of all sales subject to the prepared food and beverage tax. The amounts shall be set forth in a bracket system and distributed to each retailer responsible for collecting the prepared food and beverage tax. The use of the bracket system does not relieve the retailer from the duty and liability of collecting and remitting to the local administrative authority an amount equal to the prepared food and beverage tax levied by the county.

"Sec. 9. Administration. -- The county shall administer and collect the taxes levied pursuant to this act. Wake County may contract with the City of Raleigh to perform these functions.

The taxes levied pursuant to this act are due and payable to the county in monthly installments on or before the fifteenth day of the month following

the month in which the tax accrues. Every taxable establishment liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return to the county. The county shall design, print, and furnish on request to all taxable establishments the necessary forms for filing returns and instructions to ensure the full collection of the tax.

Returns filed with the county pursuant to this act are not public records ~~as defined by G.S. 132.1~~ and may not be disclosed except ~~as required by law,~~ in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

"Sec. 10. Distribution and Use of Proceeds of Occupancy Tax. -- (a) Initial Deductions. -- It is anticipated for allocation purposes that the annual net proceeds realized from the levy of the tax authorized by Section 4 of this act will be at least three million eight hundred fifteen thousand dollars ($3,815,000). The county shall distribute the first three million eight hundred fifteen thousand dollars ($3,815,000) of the net proceeds of the tax levied under Section 4 of this act as provided in this section; the county shall distribute any proceeds in excess of this amount as provided in Section 12 of this act. The county may deduct from the gross proceeds of the taxes collected pursuant to Section 4 of this act an amount not to exceed three percent (3%) of the gross proceeds to pay for the direct cost of administering and collecting the taxes. ~~For the first two years the tax levied under Section 4 of this act is in effect, before making the distributions provided in subsection (b), the county shall deduct from the net proceeds of the tax the sum of one hundred thousand dollars ($100,000) in each fiscal year and shall remit this sum to Wake Technical Community College. After the first two years the tax levied under Section 4 of this act is in effect, before~~ Before making the distributions provided in subsection (b), the Board of Commissioners of Wake County may, in its discretion, deduct from the net proceeds of the tax the sum of one hundred thousand dollars ($100,000) in each fiscal year and remit this sum to Wake Technical Community College. Wake Technical Community College must use funds remitted to it under this subsection only to support its ongoing program of training individuals in hotel and motel management and in food service. Funds received by Wake Technical Community College under this subsection that have not been expended for this purpose at the end of each fiscal year shall revert to Wake County for distribution in the following fiscal year pursuant to this section and Section 12 of this act.

(b) Monthly Distributions; Use. -- The county shall make the distributions provided in this subsection by the twentieth day of the month following the month in which the tax is collected.

(1) Distribution to Raleigh. After deducting the amounts provided in subsection (a), the county shall transfer to the City of Raleigh an amount equal to forty-five and twenty-five one hundredths percent (45.25%) of the remaining net proceeds of each monthly collection. The net proceeds received by Raleigh shall be applied in accordance with the following priorities.

a. The city may use the first six hundred eighty thousand dollars ($680,000) of the net proceeds of the taxes levied under this act to fund the acquisition, construction, financing, debt servicing, maintenance, or operation of convention centers,

civic centers, performing arts centers, coliseums, auditoriums, and museums; to provide off-street parking facilities for use in conjunction with such facilities; and to fund visitor-related programs and activities, including cultural programs, events or festivals, and convention and visitor programs and activities of the Greater Raleigh Convention and Visitor Bureau.

b. The city shall use any additional net tax proceeds received only for (i) the acquisition, construction, renovation, financing, debt service, maintenance, and operation of expansions and additions to the Raleigh Civic Center Complex or similar facilities, and (ii) the construction of sports, cultural, and arts facilities, including a coliseum to be built in conjunction with North Carolina State University at Raleigh, a performing arts theater, a visual arts program, and a children's museum. Any funds not spent in a fiscal year may be held in one or more reserve accounts by the city for future use in the range of activities allowed by this subsection. The city may make expenditures pursuant to this subdivision b. only after the city and county have agreed on the amount and purpose of the expenditure. The county's approval of an expenditure must be evidenced by a resolution adopted by the board of commissioners.

(2) Distribution to Cary. After deducting the amount provided in subsection (a), the county shall transfer to the Town of Cary an amount equal to five percent (5%) of the remaining net proceeds of the tax levied under Section 4 of this act. The Town of Cary shall expend these proceeds for public relations and promotional activities for the town and for visitor-related programs and activities, including cultural programs, events, festivals, and other visitor-related programs.

(3) Distribution to Wake County. After deducting the amount provided in subsection (a), the county shall retain an amount equal to thirty-four and seventy-five one hundredths percent (34.75%) of the remaining net proceeds of the tax levied under Section 4 of this act. Wake County may expend these proceeds only for the Raleigh Civic Center Complex or similar facilities or for construction of sports, cultural, and arts facilities, including a coliseum to be built in conjunction with North Carolina State University at Raleigh, a performing arts theater, a visual arts program, and a children's museum. Any funds not spent in a fiscal year may be held in reserve accounts by the county for future use in the range of activities allowed by this subsection. The county may make expenditures pursuant to this subdivision only after the city and county have agreed on the amount and purpose of the expenditure. The city's approval of an expenditure must be evidenced by a resolution adopted by the city council.

(4) Distribution to Greater Raleigh Convention and Visitor Bureau. After deducting the amounts provided in subsection (a), the county

shall remit fifteen percent (15%) of the remaining net proceeds to the Greater Raleigh Convention and Visitor Bureau. The Greater Raleigh Convention and Visitor Bureau may expend these funds pursuant to the provisions of Section 15 of this act.

In the event that the amount distributed to the Greater Raleigh Convention and Visitor Bureau under this act is less than one million dollars ($1,000,000) in a fiscal year, the city and the county shall each pay to the Greater Raleigh Convention and Visitor Bureau a sum, derived from its expected portion of the proceeds of the taxes authorized in this act, equal to one-half of the difference between one million dollars ($1,000,000) and the amount received by the Bureau, so that the total revenue received by the Bureau equals at least one million dollars ($1,000,000) in each fiscal year.

"Sec. 11. Distribution of Prepared Food and Beverage Tax. -- It is anticipated for allocation purposes that the annual net proceeds realized from the levy of the tax authorized by Section 5 of this act will be at least four million five hundred thousand dollars ($4,500,000). The county shall distribute the first four million five hundred thousand dollars ($4,500,000) of the net proceeds of the taxes levied under Section 5 of this act as provided in this section; the county shall distribute any proceeds in excess of this amount as provided in Section 13 of this act.

The county may deduct from the gross proceeds of the taxes collected pursuant to Section 5 of this act an amount not to exceed three percent (3%) of the gross proceeds to pay for the direct cost of administering and collecting the taxes. The county shall make the distributions provided in this section by the twentieth day of the month following the month in which the tax is collected.

(1) Distribution to Raleigh. After deducting the amount provided above, the county shall transfer to the City of Raleigh an amount equal to forty-seven and seventy-five one hundredths percent (47.75%) of the net proceeds of each monthly collection. The net proceeds received by Raleigh shall be applied in accordance with the following priorities.

a. The city may use the first six hundred eighty thousand dollars ($680,000) of the net proceeds of the taxes levied under this act to fund the acquisition, construction, financing, debt servicing, renovation, maintenance, or operation of convention centers, civic centers, performing arts centers, coliseums, auditoriums, and museums; to provide off-street parking facilities for use in conjunction with such facilities; and to fund visitor-related programs and activities, including cultural programs, events or festivals, and convention and visitor programs and activities of the Convention and Visitor Bureau.

b. The city shall use any additional net tax proceeds received only for (i) the acquisition, construction, renovation, financing, debt service, maintenance, and operation of expansions and additions to the Raleigh Civic Center

Complex, and (ii) the construction of sports, cultural, and arts facilities, including a coliseum to be built in conjunction with North Carolina State University at Raleigh, a performing arts theater, a visual arts program, and a children's museum. Any funds not spent in a fiscal year may be held in one or more reserve accounts by the city for future use in the range of activities allowed by this subsection. The city may make expenditures pursuant to this section only after the city and county have agreed on the amount and purpose of the expenditure. The county's approval of an expenditure must be evidenced by a resolution adopted by the board of commissioners.

(2) Distribution to Wake County. The county shall retain an amount equal to thirty-seven and twenty-five one hundredths percent (37.25%) of the net proceeds of the tax levied under Section 5 of this act. Wake County may expend these proceeds only for the planning, acquisition, renovation, or construction of the Raleigh Civic Center Complex or similar facilities or for construction of sports, cultural, and arts facilities, including a coliseum to be built in conjunction with North Carolina State University at Raleigh, a performing arts theater, a visual arts program, and a children's museum. Any funds not spent in a fiscal year may be held in reserve accounts by the county for future use in the range of activities allowed by this subsection. The county may make expenditures pursuant to this subdivision only after the city and county have agreed on the amount and purpose of the expenditure. The city's approval of an expenditure must be evidenced by a resolution adopted by the city council.

(3) Distribution to Greater Raleigh Convention and Visitor Bureau. The county shall remit fifteen percent (15%) of the net proceeds of the tax levied under Section 5 of this act to the Greater Raleigh Convention and Visitor Bureau. The Greater Raleigh Convention and Visitor Bureau may expend these funds pursuant to the provisions of Section 15 of this act.

"Sec. 12. Future Revenue Allocations of the Occupancy Tax. -- In the event that the annual net proceeds of the tax levied under Section 4 of this act exceed three million eight hundred fifteen thousand dollars ($3,815,000) in a fiscal year, the additional proceeds will be distributed as follows:

(1) Any net proceeds in excess of three million eight hundred fifteen thousand dollars ($3,815,000) but less than four million one dollars ($4,000,001) shall be allocated on the following basis:
   a. Ninety-five percent (95%) to the City of Raleigh for the purposes set out in Section 10 herein.
   b. Five percent (5%) to the Town of Cary for the purposes set out in Section 10 of this act.

(2) Any net proceeds above four million dollars ($4,000,000) and up to four million five hundred thousand dollars ($4,500,000) shall be distributed monthly on the following basis:

a. Twenty-five percent (25%) to the Raleigh Regional Convention and Visitor Bureau.
b. Five percent (5%) to the Town of Cary, at least one-half of which shall be used only for capital projects authorized under Section 10 or 11 of this act and the remainder of which shall be used for the purposes authorized in Section 10(b)(2) of this act.
c. Forty-seven and five-tenths percent (47.5%) to the City of Raleigh to be used for the purposes set out in Section 10 of this act.
d. Twenty-two and five-tenths percent (22.5%) to Wake County for any use related to any of the purposes for which any local government is authorized by this act to expend tax proceeds.

(3) Any net proceeds above four million five hundred thousand dollars ($4,500,000) shall be distributed monthly on the following basis:
a. Twenty-five percent (25%) to the Raleigh Regional Convention and Visitor Bureau.
b. Five percent (5%) to the Town of Cary, at least one-half of which shall be used only for capital projects authorized under Section 10 or 11 of this act and the remainder of which shall be used for the purposes authorized in Section 10(b)(2) of this act.
c. Thirty-five percent (35%) to the City of Raleigh for any lawful purpose authorized by this act.
d. Thirty-five percent (35%) to Wake County for any lawful purpose authorized by this act.

"Sec. 13. Future Revenue Allocations of the Prepared Food and Beverage Tax. -- In the event that the annual net proceeds of the tax levied under Section 5 of this act exceed four million five hundred thousand dollars ($4,500,000) in a tax year, the additional proceeds will be allocated according to the following schedule:

(1) Any additional net proceeds up to six million five hundred thousand dollars ($6,500,000) shall be divided between the City of Raleigh and Wake County. The city shall receive seventy-five percent (75%) of the additional net proceeds for use in activities allowed under Section 10 of this act while the county will receive twenty-five percent (25%) of the net proceeds for use in any lawful activity authorized by this act.
(2) Any net proceeds in excess of six million five hundred thousand dollars ($6,500,000) shall be divided between the City of Raleigh and Wake County. The city shall receive sixty percent (60%) of the additional net proceeds for use in any lawful purpose authorized by this act while the county shall receive the remaining forty percent (40%) of the additional net proceeds for use in any lawful purpose authorized by this act.

"Sec. 14. ~~Restrictions on Certain Capital Projects. This section expires the earlier of (i) three years after the effective date of the first tax levied under this act or (ii) three and one-half years after the date this act is ratified. Notwithstanding any other provision of this act, the proceeds of the~~

~~taxes levied under this act may not be expended for the cost of any capital project other than (i) a coliseum to be built in conjunction with North Carolina State University at Raleigh, (ii) a civic center complex, (iii) a visual or performing arts center, or (iv) a children's museum, and off-street parking associated with these four projects. As used in this section, the term "cost" includes the cost of construction of a capital facility; planning, engineering, as well as architectural and consulting services, and any other expenses and charges relating to a new capital project.~~ Transfers to Centennial Authority. -- (a) Construction of Regional Facility. -- On or before June 30, 1996, the City of Raleigh and Wake County shall jointly transfer eleven million dollars ($11,000,000) from undesignated proceeds to the Centennial Authority, and on or before June 30, 1997, the City of Raleigh and Wake County shall jointly transfer an additional eleven million dollars ($11,000,000) from undesignated proceeds to the Centennial Authority. The proportions of this sum to be drawn from undesignated proceeds distributed to the City of Raleigh and from undesignated proceeds distributed to Wake County shall be determined by the city and the county by interlocal agreement entered into pursuant to Article 20 of Chapter 160A of the General Statutes. If the city and the county are unable to agree on the relative proportions to be drawn from net proceeds distributed to each of them, each shall transfer from undesignated proceeds distributed to it its proportional share based on the total undesignated proceeds distributed to it during the preceding 36-month period. The Centennial Authority shall use the funds distributed to it pursuant to this subsection only to fund all or part of the acquisition, construction, financing, and debt servicing of a regional facility to be located in the general vicinity of the Carter-Finley Stadium.

(b) Operation, Renovation, Maintenance, and Repair of Regional Facility. -- During July of 1995, and each July thereafter, the City of Raleigh and Wake County shall each transfer to the Centennial Authority seven percent (7%) of the total undesignated proceeds distributed to it during the preceding fiscal year. The Centennial Authority shall use the funds transferred to it pursuant to this subsection only for enhancement of operating revenues of a regional facility and for planning, design, renovations, maintenance, and repairs to a regional facility.

"Sec. 15. Greater Raleigh Convention and Visitor Bureau.

(1) When the board of county commissioners adopts a resolution levying the tax, the City of Raleigh shall take immediate action to adopt an ordinance establishing the Greater Raleigh Convention and Visitor Bureau. The Bureau shall be governed by a Board of Directors consisting of 12 members. This Bureau shall be the continuation of the existing Raleigh Convention and Visitor Bureau established pursuant to Chapter 850 of the Session Laws of 1985. At least three of the county's appointees shall reside in Raleigh and at least one of the county's appointees shall reside in Cary. The appointments shall be made as follows:

a. Five owners or operators of hotels, motels, or other taxable establishments, three of whom shall be elected by the Raleigh City Council and two of whom shall be elected by the Board of Commissioners of Wake County from a list of at least 10

nominees furnished by the Raleigh Hotel and Motel Association. The list of nominees shall include the names of at least three restaurant owners or operators.

b. Two representatives of tourist or convention related businesses, one appointed by the Raleigh City Council and one by the Wake County Board of Commissioners.

c. One member nominated by the Greater Raleigh Chamber of Commerce and appointed by the Wake County Board of Commissioners.

d. Four at-large members, two appointed by the City of Raleigh and two appointed by Wake County.

Members shall serve according to the ordinances and regulations of the city concerning service on city boards and commissions, except that members appointed by Wake County shall serve according to the ordinances and regulations of Wake County concerning service on county boards and commissions.

(2) Powers and Duties of Bureau. The Greater Raleigh Convention and Visitor Bureau may contract with any person, firm, or agency to advise and assist it in the promotion of travel, tourism, and conventions. The Bureau shall prepare an annual budget based on anticipated revenues and shall submit the budget to the Raleigh City Manager and Wake County Manager for processing and approval through the regular budget procedures of the city and the county. The Bureau shall make quarterly reports to the Raleigh City Council and the Wake County Board of Commissioners detailing its revenues, expenditures, and activities. The city or the county may audit the Bureau's financial records upon reasonable notice to the Bureau. At the end of each fiscal year, any funds of the Bureau not expended, or obligated or reserved as approved by the Raleigh City Council and the Wake County Board of Commissioners, shall be remitted equally to the City of Raleigh and Wake County for use in accordance with Section 10 of this act.

"Sec. 16. Penalties. -- A person, firm, corporation, or association who fails or refuses to file a return and pay the tax due under this ~~Part shall pay a penalty of ten dollars ($10.00) for each day's omission up to a maximum of two thousand dollars ($2,000) for each return. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The Wake County Board of Commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this section.~~ act is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Wake County Board of Commissioners has the same authority to waive the penalties for a tax levied under this act that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

"Sec. 17. Authority to Contract. -- Wake County and each municipality located in Wake County may contract with any person, agency, association, or nonprofit corporation to undertake or carry out the activities and programs for which the proceeds may be expended. All contracts entered into pursuant to this ~~subsection~~ section shall require an annual financial audit of any funds expended and a performance audit of contractual obligations.

"Sec. 18. Effect on existing taxes. -- The levy of a tax pursuant to this act repeals the authority of the county or a unit of local government in Wake County to enact an occupancy tax under any other local act.

"Sec. 19. Repeal. -- The taxes levied pursuant to this authority may be repealed by the county by enacting an ordinance of repeal. No such repeal shall be effective until at least 180 days after the passage of the repeal ordinance. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

"Sec. 20. This act is effective upon ratification."

Sec. 6. The provisions of this act are severable. If any provision of this act is declared invalid by a court, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application.

Sec. 7. G.S. 105-164.14(c) is amended by adding a new subdivision to read:

"(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes."

Sec. 8. G.S. 18B-1006(a) reads as rewritten:

"(a) School and College Campuses. -- No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or ~~college~~ college, other than at a regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes except for a public school or college function, unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit."

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1995.

S.B. 1055 **CHAPTER 459**

AN ACT TO MODIFY THE EXCISE TAX ON NEWSPRINT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-102.6 reads as rewritten:

"§ *105-102.6. ~~Producers~~ Publishers of newsprint publications.*

(a) Purpose. -- The purpose of this section is to provide ~~an incentive for the use of recycled newsprint.~~ incentives for the recycling of newsprint and for the use of newsprint that contains recycled content.

(b) Definitions. -- The following definitions apply in this section:

(1) ~~Net~~ Gross tonnage of newsprint consumed. -- The weight in metric tons of all newsprint ~~acquired~~ consumed by a ~~producer,~~ publisher. ~~less the weight in metric tons of any acquired newsprint the producer diverts from solid waste.~~

(2) Newsprint. -- Uncoated paper, whether supercalendered or machine finished, made primarily from mechanical wood pulp combined with some chemical wood pulp, weighing between 24.5 and 35 pounds for 500 sheets of paper two feet by three feet in size, and having a brightness of less than 60.

(2.1) Nonvirgin newsprint. -- Newsprint that contains recycled postconsumer recovered paper.

(3) Postconsumer ~~waste~~ recovered paper. -- Paper products, generated by a business or consumer, that have served their intended end uses and have been separated or diverted from solid waste.

(4) ~~Producer.~~ Publisher. -- A person engaged in the business of producing publications printed on newsprint who acquires and uses newsprint for this business.

(5) Recycled content percentage. -- The percentage by weight of the total ~~net~~ gross tonnage of newsprint consumed by the ~~producer~~ publisher that is recycled postconsumer ~~waste~~ recovered paper. For example, if a publisher consumes 10 tons of virgin newsprint, 10 tons of nonvirgin newsprint that contains fifty percent (50%) recycled postconsumer recovered paper, and 10 tons of nonvirgin newsprint that contains ten percent (10%) recycled postconsumer recovered paper, the publisher's recycled content percentage is 6/30 or twenty percent (20%).

(5.1) Recycled content tonnage. -- The weight in metric tons of the total gross tonnage of newsprint consumed by the publisher that is recycled postconsumer recovered paper.

(5.2) Recycling. -- Any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed, and reused or returned to use in the form of raw materials or products.

(5.3) Recycling tonnage. -- The weight in metric tons of newsprint that is recycled or diverted to recycling by a publisher.

(5.4) Virgin newsprint. -- Newsprint that does not contain recycled postconsumer recovered paper.

(c) Minimum Recycled Content Percentage. -- The recycled content percentage of newsprint consumed by a ~~producer~~ publisher shall equal or exceed the following minimum recycled content percentages:

During 1991 and 1992, twelve percent (12%).

During 1993, fifteen percent (15%).

During 1994, twenty percent (20%).

During ~~1995,~~ 1995 and 1996, twenty-five percent (25%).

During ~~1996,~~ 1997 and 1998, thirty percent (30%).
During ~~1997,~~ 1999 and 2000, thirty-five percent (35%).
After ~~1997,~~ 2000, forty percent (40%).

A publisher who has developed and operates or contracts for the operation of a newspaper recycling program shall receive partial credit toward the recycled content percentage goals established in this subsection on the basis of one-half ton credit toward its total recycled content tonnage for each ton of recycling tonnage.

(d) Tax. -- Every ~~producer~~ publisher shall apply for and obtain from the Secretary ~~of Revenue~~ a newsprint ~~producer~~ publisher tax reporting ~~number,~~ number and shall file an annual report with the Secretary by January 31 of each year. The report shall include the following information for the preceding calendar year:

(1) Tonnage of virgin newsprint consumed.
(2) Tonnage of nonvirgin newsprint consumed.
(3) Gross tonnage of newsprint consumed.
(4) Itemized percentages of recycled postconsumer recovered paper contained in tonnage of nonvirgin newsprint consumed.
(5) Recycled content tonnage.
(6) Recycled content percentage.
(7) Recycling tonnage.

In addition, each ~~producer~~ publisher whose recycled content percentage for a calendar ~~quarter~~ year is less than the applicable minimum recycled content percentage provided in subsection (c) ~~for a calendar quarter shall, within 10 days after the last day of the quarter, report to the Secretary the amount in metric tons by which (i) the applicable minimum recycled content percentage multiplied by the net tonnage of newsprint consumed by the producer in the preceding quarter exceeds (ii) the actual tonnage of postconsumer waste paper consumed by the producer during the preceding quarter, and~~ shall pay a tax ~~on the amount reported at the rate~~ of fifteen dollars ($15.00) ~~per ton,~~ on each ton by which the publisher's recycled content tonnage falls short of the tonnage of recycled postconsumer recovered paper needed to achieve the applicable minimum recycled content percentage provided in subsection (c). This tax is due when the report is filed. No ~~county, city, or town~~ county or municipality may impose a license tax on the business taxed under this section.

(e) Exemption. -- The tax levied in this section does not apply to an amount calculated pursuant to subsection (d) to the extent the amount is attributable solely to the ~~producer's~~ publisher's inability to obtain sufficient recycled content newsprint because (i) recycled content newsprint was not available at a price comparable to the price of virgin newsprint; (ii) recycled content newsprint of a quality comparable to virgin newsprint was not available; or (iii) recycled content newsprint was not available within a reasonable period of time during the reporting period. In order to claim the exemption provided in this subsection, a ~~producer~~ publisher must certify to the ~~Secretary of Revenue;~~ Secretary:

(1) The amount of virgin newsprint consumed by the ~~producer~~ publisher during the reporting period solely for one of the reasons listed above.

(2) That the ~~producer~~ publisher attempted to obtain recycled content newsprint from every manufacturer of recycled content newsprint that offered to sell recycled content newsprint to the ~~producer~~ publisher within the preceding ~~12 months.~~ calendar year.

(3) The name, address, and telephone number of each recycled content newsprint manufacturer contacted, including the company name and the name of the company's individual representative or employee.

(f) Use of Proceeds. -- The Secretary ~~of Revenue shall, on a quarterly basis,~~ shall, on or before April 15 of each year, credit the net proceeds of the tax imposed by this section to the Solid Waste Management Trust Fund created in G.S. 130A-309.12."

Sec. 2. G.S. 105-109.1 reads as rewritten:

"*§ 105-109.1. Interest.*

The taxes on gross receipts levied in G.S. 105-37.1(a), 105-38(f), and 105-65.1(b)(2), the tax on installment paper dealers levied in G.S. 105-83(b), and the tax on ~~producers~~ publishers of newsprint publications levied in G.S. 105-102.6, shall bear interest at the rate established under G.S. 105-241.1(i) from the time the taxes were due until the taxes are paid."

Sec. 3. This act becomes effective January 1, 1996.

In the General Assembly read three times and ratified this the 19th day of July, 1995.

H.B. 899 **CHAPTER 460**

AN ACT TO PROVIDE FOR DISPOSAL OF UNCLAIMED PROPERTY BY LANDLORDS, TO AMEND THE LAW OF SUMMARY EJECTMENT BY REDUCING THE TIME ALLOWED FOR A DEFENDANT TO APPEAR IN COURT, AND TO PROVIDE FOR THE EXECUTION OF JUDGMENTS FOR POSSESSION THAT ARE MORE THAN THIRTY DAYS OLD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 42-25.9 is amended by adding two new subsections to read:

"(g) Ten days after being placed in lawful possession by execution of a writ of possession, a landlord may throw away, dispose of, or sell all items of personal property remaining on the premises. During the 10-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. Upon the tenant's request prior to the expiration of the 10-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. If the landlord elects to sell the property at public or private sale, the landlord shall give written notice to the tenant by first-class mail to the tenant's last known address at least seven days prior to the day of the sale. The seven-day notice of sale may run concurrently with the 10-day period

which allows the tenant to request possession of the property. The written notice shall state the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the tenant, upon request, within 10 days after the sale, and will thereafter be delivered to the government of the county in which the rental property is located. Upon the tenant's request prior to the day of sale, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. The landlord may apply the proceeds of the sale to the unpaid rents, damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the tenant, upon request, within 10 days of the sale and shall thereafter be delivered to the government of the county in which the rental property is located.

(h) If the total value of all property remaining on the premises at the time of execution of a writ of possession in an action for summary ejectment is less than one hundred dollars ($100.00), then the property shall be deemed abandoned five days after the time of execution, and the landlord may throw away or dispose of the property. Upon the tenant's request prior to the expiration of the five-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon."

Sec. 2. G.S. 42-25.9(b) reads as rewritten:

"(b) If any lessor, landlord, or agent seizes possession of or interferes with a tenant's access to a tenant's or household member's personal property in any manner not in accordance with G.S. 44A-2(e) or 42-25.9(d), ~~G.S. 44A-2(e) or 42-25.9(d),~~ G.S. 42-25.9(d), 42-25.9(g), 42-25.9(h), or 42-36.2 the tenant or household member shall be entitled to recover possession of his personal property or compensation for the value of the personal property, and, in any action brought by a tenant or household member under this Article, the landlord shall be liable to the tenant or household member for actual damages, but not including punitive damages, treble damages or damages for emotional distress."

Sec. 3. G.S. 42-25.9(d) reads as rewritten:

"(d) If any tenant abandons personal property of five hundred dollar ($500.00) value or less in the demised premises, or fails to remove such property at the time of execution of a writ of possession in an action for summary ejectment, the landlord may, as an alternative to the procedures provided in ~~G.S.42-36.2 or G.S. 44A-2(e),~~ G.S.42-25.9(g), 42-25.9(h), or 42-36.2, deliver the property into the custody of a nonprofit organization regularly providing free or at a nominal price clothing and household furnishings to people in need, upon that organization agreeing to identify and separately store the property for 30 days and to release the property to the tenant at no charge within the 30-day period. A landlord electing to use this procedure shall immediately post at the demised premises a notice containing the name and address of the property recipient, post the same notice for 30 days or more at the place where rent is received, and send the same notice by first-class mail to the tenant at the tenant's last known address. Provided, however, that the notice shall not include a description of the property."

Sec. 4. G.S. 42-28 reads as rewritten:

"*§ 42-28. Summons issued by clerk.*

When the lessor or his assignee files a complaint pursuant to G.S. 42-26 or 42-27, and asks to be put in possession of the leased premises, the clerk of superior court shall issue a summons requiring the defendant to appear at a certain time and place not to exceed ~~10~~ seven days from the issuance of the ~~summons~~ summons, excluding weekends and legal holidays, to answer the complaint. The plaintiff may claim rent in arrears, and damages for the occupation of the premises since the cessation of the estate of the lessee, not to exceed the jurisdictional amount established by G.S. 7A-210(1), but if he omits to make such claim, he shall not be prejudiced thereby in any other action for their recovery."

Sec. 5. G.S. 42-29 reads as rewritten:

"*§ 42-29. Service of summons.*

The officer receiving the summons shall mail a copy of the summons and complaint to the defendant no later than the end of the next business day or as soon as practicable at ~~his~~ the defendant's last known address in a stamped addressed envelope provided by the plaintiff to the action. The officer ~~may~~ may, within five days of the issuance of the summons, attempt to telephone the defendant requesting that the defendant either personally visit the officer to accept service, or schedule an appointment for the defendant to receive delivery of service from the officer. If the officer does not attempt to telephone the defendant or the attempt is ~~unsuccessful,~~ unsuccessful or does not result in service to the defendant, the officer shall make at least one visit to the place of abode of the defendant within five days of the issuance of the summons at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service. He then shall deliver a copy of the summons together with a copy of the complaint to the defendant, or leave copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. If such service cannot be made the officer shall affix copies to some conspicuous part of the premises claimed and make due return showing compliance with this section."

Sec. 6. G.S. 42-36.2 reads as rewritten:

"*§ 42-36.2. Notice to tenant of execution of writ for possession of property; storage of evicted tenant's personal property.*

(a) When Sheriff May Remove Property. -- Before removing a tenant's personal property from demised premises pursuant to a writ for possession of real property or an order, the sheriff shall give the tenant notice of the approximate time the writ will be ~~executed, to~~ executed. The time within which the sheriff shall have to execute the writ shall be no more than seven days from the sheriff's receipt thereof. The sheriff shall remove the tenant's property, as provided in the writ, no earlier than the time specified in the notice, unless:

(1) The landlord, or his authorized agent, signs a statement saying that the tenant's property can remain on the premises, in which case the sheriff shall simply lock the premises; or

(2) The landlord, or his authorized agent, signs a statement saying that the landlord does not want to eject the tenant because the

tenant has paid all court costs charged to him and has satisfied his indebtedness to the landlord.

Upon receipt of either statement by the landlord, the sheriff shall return the writ unexecuted to the issuing clerk of court and shall make a notation on the writ of his reasons. The sheriff shall attach a copy of the landlord's statement to the writ. If the writ is returned unexecuted because the landlord signed a statement described in subdivision (2) of this subsection, the clerk shall make an entry of satisfaction on the judgment docket. If the sheriff padlocks, the costs of the proceeding shall be charged as part of the court costs.

(b) Sheriff May Store Property. -- When the sheriff removes the personal property of an evicted tenant from demised premises pursuant to a writ or order the tenant shall take possession of his property. If the tenant fails or refuses to take possession of his property, the sheriff may deliver the property to any storage warehouse in the county, or in an adjoining county if no storage warehouse is located in that county, for storage. The sheriff may require the landlord to advance the cost of delivering the property to a storage warehouse plus the cost of one month's storage before delivering the property to a storage warehouse. If a landlord refuses to advance these costs when requested to do so by the sheriff, the sheriff shall not remove the tenant's property, but shall return the writ unexecuted to the issuing clerk of court with a notation thereon of his reason for not executing the writ. Within 10 days of the landlord's being placed in lawful possession by execution of a writ of possession and upon the tenant's request within that 10-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. During the 10-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. After the expiration of the 10-day period, the landlord may throw away, dispose of, or sell the property in accordance with the provisions of G.S. 42-25.9(g). ~~All~~ If the tenant does not request release of the property within 10 days, all costs of summary ejectment, execution and storage proceedings shall be charged to the tenant as court costs and shall constitute a lien against the stored property or a claim against any remaining balance of the proceeds of a warehouseman's lien sale.

(c) Liability of the Sheriff. -- A sheriff who stores a tenant's property pursuant to this section and any person acting under the sheriff's direction, control, or employment shall be liable for any claims arising out of the willful or wanton negligence in storing the tenant's property.

(d) Notice. -- The notice required by subsection (a) shall inform the tenant that failure to request possession of any property on the premises within 10 days of execution may result in the property being thrown away, disposed of, or sold. Notice shall be made by one of the following methods:

(1) By delivering a copy of the notice to the tenant or his authorized agent at least two days before the time stated in the notice for serving the writ;

(2) By leaving a copy of the notice at the tenant's dwelling or usual place of abode with a person of suitable age and discretion who resides there at least two days before the time stated in the notice for serving the writ; or

(3) By mailing a copy of the notice by first-class mail to the tenant at his last known address at least five days before the time stated in the notice for serving the writ."

Sec. 7. Article 3 of Chapter 42 of the General Statutes is amended by adding a new section to read:

"*§ 42-36.1A. Judgments for possession more than 30 days old.*

Prior to obtaining execution of a judgment that has been entered for more than 30 days for possession of demised premises, a landlord shall sign an affidavit stating that the landlord has neither entered into a formal lease with the defendant nor accepted rental money from the defendant for any period of time after entry of the judgment."

Sec. 8. G.S 42-25.7 reads as rewritten:

"*§ 42-25.7. Distress and distraint not permitted.*

It is the public policy of the State of North Carolina that distress and distraint are prohibited and that landlords of residential rental property shall have ~~security interests or liens on~~ rights concerning the personal property of their residential tenants only in accordance with ~~G.S. 44A-2(e).~~ G.S. 42-25.9(d), 42-25.9(g), 42-25.9(h), or 42-36.2."

Sec. 9. G.S. 44A-2(e) reads as rewritten:

"(e) Any lessor of ~~a house, room, apartment, office, store or other~~ nonresidential demised premises has a lien on all furniture, ~~household~~ furnishings, trade fixtures, equipment and other personal property to which the tenant has legal title and which remains on the demised premises if (i) the tenant has vacated the premises for 21 or more days after the paid rental period has expired, and (ii) the lessor has a lawful claim for damages against the tenant. If the tenant has vacated the premises for 21 or more days after the expiration of the paid rental period, or if the lessor has received a judgment for possession of the premises which is executable and the tenant has vacated the premises, then all property remaining on the premises may be removed and placed in storage. If the total value of all property remaining on the premises is less than one hundred dollars ($100.00), then it shall be deemed abandoned five days after the tenant has vacated the premises, and the lessor may remove it and may donate it to any charitable institution or organization. Provided, the lessor shall not have a lien if there is an agreement between the lessor or his agent and the tenant that the lessor shall not have a lien. This lien shall be for the amount of any rents which were due the lessor at the time the tenant vacated the premises and for the time, up to 60 days, from the vacating of the premises to the date of sale; and for any sums necessary to repair damages to the premises caused by the tenant, normal wear and tear excepted; and for reasonable costs and expenses of sale. The lien created by this subsection shall be enforced by sale at public sale pursuant to the provisions of G.S. 44A-4(e). This lien shall not have priority over any security interest in the property which is perfected at the time the lessor acquires this lien."

Sec. 10. This act becomes effective January 1, 1996.

In the General Assembly read three times and ratified this the 19th day of July, 1995.

H.B. 1060 **CHAPTER 461**

AN ACT AMENDING THE GENERAL STATUTES RELATING TO THE CONSOLIDATION OF CITIES AND COUNTIES AND CONSOLIDATED CITY-COUNTY TAXATION AND FINANCE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160B of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Consolidated City-County Powers and Governance.

"*§ 160B-2.1. Powers of consolidated city-county.*

(a) A consolidated city-county shall have and may exercise or may hereafter be authorized or required to exercise the powers, duties, functions, rights, privileges, and immunities granted to:

(1) A county under the Constitution and the general laws of the State of North Carolina, throughout its jurisdiction; and

(2) A city under the Constitution and the general laws of the State of North Carolina, within an urban service district.

(b) Outside the boundaries of an urban service district, the consolidated city-county shall have and may exercise or may hereafter be authorized or required to exercise the same powers, duties, functions, rights, privileges, and immunities granted to a city under the Constitution and the general laws of the State of North Carolina that can be exercised or may hereafter be authorized or required to exercise outside of city boundaries.

"*§ 160B-2.2. Dissolution of consolidated city-county; establishment of study commission; purposes and powers of study commission.*

(a) The governing board of a consolidated city-county may by resolution establish a governmental study commission to study all matters pertaining to the dissolution of the consolidated city-county and reestablishment of separate city and county government. The study commission may:

(1) Prepare a report of its findings and conclusions.

(2) Prepare drafts of any agreements or legislation necessary to effect the dissolution of a consolidated city-county.

(3) Prepare a plan for dissolution of the consolidated city-county.

(b) A study commission established pursuant to this section may:

(1) Adopt rules and regulations for the conduct of its business.

(2) Employ personnel.

(3) Contract with consultants.

(4) Hold hearings in the furtherance of its business.

(5) Take any other action necessary or expedient to the furtherance of its business."

Sec. 2. G.S. 160B-4 reads as rewritten:

"*§ 160B-4. Definition of urban service districts to replace municipalities abolished at the time of consolidation.*

(a) The governing board, by resolution, may define an urban service district within the boundaries of the largest municipality that existed in the county before consolidation and within the boundaries of any other municipality abolished at the time of the establishment of the consolidated city-county. Notwithstanding the provisions of G.S. 160B-7, the resolution may also define an urban service district to include areas proposed for inclusion in an urban service district and identified in a plan for consolidation prepared by a consolidation study commission pursuant to Article 20 of Chapter 153A of the General Statutes or a plan approved by the General Assembly. Any urban service district so defined shall comprise the total area of the abolished municipality as it existed immediately before the effective date of consolidation. ~~The resolution shall take effect upon its adoption.~~ As determined by the governing board, the resolution shall take effect as to the areas included therein either upon its adoption or at the beginning of a fiscal year commencing after its passage.

(b) Prior to the effective date of consolidation, an interim governing board of a consolidated city-county by resolution may define an urban service district. The resolution defining the urban service district shall take effect upon the effective date of the consolidation.

(c) The powers, duties, functions, rights, privileges, and immunities of an urban service district shall be exercised or administered by the governing board of the consolidated city-county. Any revenues, distributions or other funds due an urban service district shall be paid to the governing board of the consolidated city-county."

Sec. 3. G.S. 160B-7 is amended by adding a new subsection to read:

"(d1) Alternative Notice. -- Notwithstanding the provisions of subsection (d) of this section, first-class mail notice shall not be required where a plan for consolidation prepared by a consolidation study committee pursuant to Article 20 of Chapter 153A of the General Statutes or a plan approved by the General Assembly proposed to include the area under consideration for annexation within an urban service district."

Sec. 4. Chapter 160B of the General Statutes is amended further by adding a new Article to read:

"ARTICLE 5.

"Assumption of Obligations and Debt Secured By a Pledge of Faith and Credit.

"Part 1. General Provisions.

"*§ 160B-16. Applicability of this Article.*

(a) This Article applies to any county that has (i) a population over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.

(b) If this section is declared unconstitutional or invalid by the courts, it does not affect the validity of the Article as a whole or any part other than the part so declared to be unconstitutional or invalid.

"Part 2. Assumption of Obligations and Debt.

"*§ 160B-17. Organizational meeting; preparation of budget.*

The governing board of a consolidated city-county shall have its first organizational meeting as provided in the charter or applicable local acts of the General Assembly, but not later than the first business day following the

effective date of the consolidation. Unless otherwise provided in the charter or applicable local acts, the organizational meeting shall be held at 12:00 noon at the regular meeting place of the previous board of county commissioners. Prior to the effective date of consolidation, any interim governing board designated or appointed in the charter or applicable local acts may meet to discuss business and take action as appropriate, including preparation of a proposed budget for the next ensuing fiscal year. In addition, any such interim governing board may take any action which is specifically authorized by this Chapter to be taken by an interim governing board. Meetings of any interim governing board during this period are subject to all applicable notice and meeting procedures required by general law.

"*§ 160B-18. Referendum approval of certain debt assumption required for consolidation; effective date of consolidation.*

(a) Referendum Approval of Certain Debt Assumption Required for Consolidation. -- For the consolidation of a city with a county to be effective in accordance with the provisions hereof, the assumption by the consolidated city-county of all debt secured by a pledge of faith and credit of said city outstanding at the effective date of consolidation must have been approved by referendum (which referendum approval may occur at different times for different portions of said debt).

(b) Effective Date of Consolidation. -- Subject to the requirement of referendum approval of certain debt assumption for consolidation as provided by subsection (a) of this section, the consolidation of a city with a county shall be effective upon the later of:

(1) Sixty days following publication of notice of the enactment of the consolidation by the General Assembly;

(2) Sixty days following publication of the statement of result of the latest referendum relating to the consolidation or to the assumption of debt secured by a pledge of faith and credit in connection with the consolidation; or

(3) Any effective date of the consolidation set by the General Assembly.

In addition, upon adoption of concurrent resolutions by the governing board of each unit to be consolidated, or by the interim governing board of the consolidated city-county, the effective date may be delayed further, but no later than July 1 of the next calendar year.

(c) Limitation of Local Acts. -- No special, private, or local act, including any enactment of a consolidation of a city with a county, enacted after July 1, 1995, may be construed to modify, amend, or repeal any portion of this section unless it expressly so provides by specific reference to this section.

"*§ 160B-19. Referendum on consolidation and on assumption of certain debt secured by a pledge of faith and credit; right to issue certain authorized but unissued debt secured by a pledge of faith and credit.*

(a) In connection with a city-county consolidation, if there exists at the effective date of the consolidation (i) any outstanding debt secured by a pledge of faith and credit of a consolidating city or (ii) the right to issue any authorized but unissued debt of said city that is to be secured by a pledge of

faith and credit and is proposed to be assumed by the consolidated city-county, then there shall have been held a favorable referendum on the question of the assumption of that debt secured by a pledge of faith and credit and, if applicable, there shall have been held a referendum on the assumption of the right to issue that authorized but unissued debt secured by a pledge of faith and credit.

(b) The referendum on the question of the assumption of debt secured by a pledge of faith and credit or, if applicable, the assumption of the right to issue authorized but unissued debt secured by a pledge of faith and credit may be included in the proposition submitted to the voters in a referendum called by a consolidation study commission under G.S. 153A-405.

(c) If the General Assembly provided for a referendum on the question of consolidation instead of a referendum called by a consolidation study commission under G.S. 153A-405, the governing bodies of the units proposed to be consolidated, by resolution, may add to the ballot proposition the assumption of debt secured by a pledge of faith and credit question and, if applicable, the assumption of the right to issue authorized but unissued debt secured by a pledge of faith and credit question. In either event, the proposition shall be substantially as provided in G.S. 153A-405.

(d) If the city-county consolidation is authorized by the General Assembly without a referendum or if there otherwise has not been a referendum on the question of the assumption of any debt secured by a pledge of faith and credit or, if applicable, the question of the assumption of the right to issue any authorized but unissued faith and credit debt, then the governing bodies of the units proposed to be consolidated, by resolution, may provide for a referendum on said questions. In addition, any interim governing board for the consolidated city-county, by resolution, also may provide for such a referendum. The proposition submitted to the voters shall be substantially in the following form (and may include part or all of the bracketed language as appropriate and any other modifications as may be needed to reflect the issued debt secured by a pledge of faith and credit of any of the consolidating units or the portion of the authorized but unissued debt secured by a pledge of faith and credit of any of the consolidating units, the right to issue which is proposed to be assumed by the consolidated city-county):

'Shall, in connection with the consolidation of the City of with the County of , the consolidated unit assume the debt of each secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said city or county on the date of this referendum)] and any of said authorized but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and credit?

[ ] YES [ ] NO'

(e) To be approved the proposition must receive the votes of a majority of those voting in the referendum. In connection with the proposed consolidation of one or more cities with a county, if the assumption by the consolidated city-county of outstanding debt secured by a pledge of faith and

credit of the consolidating city and, if applicable, the right to issue authorized but unissued debt secured by a pledge of faith and credit of the consolidating city was approved by the votes of a majority of those voting in the referendum, the vote on that referendum shall constitute the approval by a majority of the qualified voters who vote thereon as required by Article V, Section 4(2) of the Constitution of North Carolina.

(f) Any such referendum on the question of consolidation or the assumption of debt secured by a pledge of faith and credit or the right to issue authorized but unissued debt secured by a pledge of faith and credit may be held on the same day as any other referendum or election in the county involved, but may not otherwise be held during the period beginning 30 days before and ending 30 days after the day of any other referendum or election to be conducted by the board of elections conducting the referendum and already validly called or scheduled by law.

(g) A notice of a referendum on consolidation or on the assumption of debt secured by a pledge of faith and credit or, if applicable, the right to issue authorized but unissued debt secured by a pledge of faith and credit shall be published at least twice in a newspaper of general circulation in the county. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the referendum, a statement as to the last date for registration for the referendum under the election laws then in effect, and substantially the text of the proposition to be voted upon. The notice shall be published by the governing bodies of the units proposed to be consolidated or, if applicable, the interim governing board of the consolidated city-county by their respective clerks or by such other person as shall be designated by each applicable governing body or board.

(h) The board of elections shall canvass any referendum on consolidation and any referendum on the assumption of debt secured by a pledge of faith and credit or, if applicable, the right to issue authorized but unissued debt secured by a pledge of faith and credit and shall certify the results to the governing bodies of the units proposed to be consolidated or, if applicable, the interim governing board of the consolidated city-county which shall then certify and declare the result of the referendum and shall publish a statement of the result once in a newspaper of general circulation in the county, with the following statement appended:

> 'Any action or proceeding challenging the regularity or validity of this referendum must be begun within 30 days after the date of publication of this statement of result.'

(i) Any action or proceeding in any court to set aside a referendum on consolidation or a referendum on assumption of debt secured by a pledge of faith and credit or, if applicable, the right to issue authorized but unissued debt secured by a pledge of faith and credit in connection with consolidation, or to obtain any other relief, upon the grounds that the referendum is invalid or was irregularly conducted, must be begun within 30 days after the publication of the statement of the result of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be

asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this section.

"§ 160B-20. *Local Government Commission review of assumption of debt secured by a pledge of faith and credit; assumption of debt secured by a pledge of faith and credit and right to issue authorized but unissued debt secured by a pledge of faith and credit upon consolidation.*

(a) Review by Local Government Commission. -- At the date specified in the following sentence if any consolidating city or county has outstanding any debt secured by a pledge of faith and credit or, if applicable, any authorized but unissued debt secured by a pledge of faith and credit which is proposed to be assumed by the consolidated city-county or has outstanding or pending approval any debt secured by a pledge of faith and credit the issuance of which was or is subject to approval by the Local Government Commission, then the assumption of any such debt and, if applicable, the assumption of the right to issue such authorized but unissued debt, if any, shall be subject to review by the Local Government Commission. The finance officers of the units proposed to be consolidated shall use their best efforts to notify the secretary of the Local Government Commission of the proposed consolidation and assumption of debt secured by a pledge of faith and credit or, if applicable, the right to issue authorized but unissued debt secured by a pledge of faith and credit at least two months before the introduction in the General Assembly of legislation proposing to enact the consolidation into law, provided that time allows. The Local Government Commission, to such extent it deems appropriate, may conduct a review of the proposed consolidation and assumption of debt secured by a pledge of faith and credit or, if applicable, the right to issue authorized but unissued debt secured by a pledge of faith and credit and may report the results of its review to the presiding officer of each house of the General Assembly to be provided to the respective committees to which the legislation to enact the consolidation shall be referred.

(b) Assumption of Debt Secured by a Pledge of Faith and Credit by Consolidated City-County. -- Subject to the requirement of referendum approval of certain debt assumption for consolidation by the General Assembly and effective upon the effective date of the consolidation provided in G.S. 160B-18(a), upon enactment of the consolidation by the General Assembly and effective upon the effective date of the consolidation provided in G.S. 160B-18(b), the debt secured by a pledge of faith and credit of the consolidating city at the effective date of the consolidation (including formerly authorized but unissued debt secured by a pledge of faith and credit as may have been issued at the time) is assumed by, and becomes a binding obligation of the consolidated city-county, and the faith and credit of the consolidated city-county is pledged to secure any such assumed debt secured by a pledge of faith and credit. In addition, any debt secured by a pledge of faith and credit of the county at the effective date of the consolidation shall become a binding obligation of the consolidated city-county and the faith and credit of the consolidated city-county is pledged to secure any such debt.

(c) Right to Issue Authorized but Unissued Debt Secured by a Pledge of Faith and Credit. -- Subject to the passage of a referendum relating to the

assumption by the consolidated city-county of the right to issue any authorized but unissued debt of the consolidating city to be secured by a pledge of faith and credit that is proposed to be assumed by the consolidated city-county, upon enactment of the consolidation by the General Assembly and effective upon the effective date of the consolidation as provided in G.S. 160B-18(b), the right to issue the authorized but unissued debt secured by a pledge of faith and credit of the consolidating city at the effective date of the consolidation is assumed by, and upon issuance such obligations become binding obligations of, the consolidated city-county, and, upon issuance, the faith and credit of the consolidated city-county is pledged to secure any such debt secured by a pledge of faith and credit. In addition, the right to issue the authorized but unissued debt secured by a pledge of faith and credit of the county at the effective date of the consolidation shall be vested in the consolidated city-county and, upon issuance, such debt secured by a pledge of faith and credit becomes a binding obligation of the consolidated city-county and, upon issuance, the faith and credit of the consolidated city-county is pledged to secure any such debt.

"*§ 160B-21. Notice of enactment of consolidation; limitation of actions.*

(a) Publication of Notice of Enactment. -- Following ratification of an act of the General Assembly authorizing consolidation, there shall be published once in a newspaper of general circulation in the county a notice of said enactment and, if applicable, the fact that in connection with said enactment there is an assumption by the consolidated city-county of the debt secured by a pledge of faith and credit of the consolidating city and, if applicable, assumption of the right to issue authorized but unissued debt secured by a pledge of faith and credit of the consolidating city and that there is also binding on the consolidated city-county the debt secured by a pledge of faith and credit of the county and, if applicable, there is vested in the consolidated city-county the right to issue authorized but unissued debt secured by a pledge of faith and credit of the county with the following statement appended:

'Any action or proceeding challenging the regularity or validity of this referendum must be begun within 30 days after the date of publication of this statement of result.'

The notice shall be published by the governing bodies of the units proposed to be consolidated or, if applicable, the interim governing board of the consolidated city-county by their respective clerks or by such other persons as shall be designated by each applicable governing body or board.

(b) Limitation on Action Contesting Validity of Enactment of Consolidation. -- Any action or proceeding in any court to set aside enactment of a city-county consolidation by the General Assembly, or to obtain any other relief, upon the grounds that the enactment is invalid or was irregularly enacted, must be begun within 30 days after the publication of the notice of the enactment. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of the enactment or any irregularity in the enactment shall be asserted, nor shall the validity of the enactment be open to question in any court upon any grounds whatever, except in an action or proceeding begun within the period of limitation prescribed in this section."

Sec. 5. G.S. 153A-405 reads as rewritten:

"§ *153A-405. Referendum; General Assembly action.*

(a) If authorized to do so by the concurrent resolutions that established it, a commission may call a referendum on its proposed plan of governmental consolidation. If authorized or directed in the concurrent resolutions, the ballot question may include the assumption of debt secured by a pledge of faith and credit language and may also include the assumption of the right to issue authorized but unissued faith and credit debt language as provided in subsection (b) of this section. The referendum may be held on the same day as any other referendum or election in the county or counties involved, but may not otherwise be held during the period beginning 30 days before and ending 30 days after the day of any other referendum or election to be conducted by the board or boards of elections conducting the referendum and already validly called or scheduled by law.

(b) The proposition submitted to the voters shall be substantially in one ~~of the following forms:~~

~~(1) Shall the County of .....and the County of .....be consolidated?~~

~~(2) Shall the City of .....and the City of .....be consolidated?~~

~~(3) Shall the City of .....be consolidated with the County of .....?~~

or more of the following forms and may include part or all of the bracketed language as appropriate and other such modifications as may be needed to reflect the issued debt secured by a pledge of faith and credit of any of the consolidating units or the portion of the authorized but unissued debt secured by a pledge of faith and credit of any of the consolidating units the right to issue which is proposed to be assumed by the consolidated city-county:

(1) 'Shall the County of and the County of be consolidated [and the consolidated unit assume the debt of each secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said counties on the date of this referendum)] and any of said authorized but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and credit?

[ ] YES [ ] NO'

(2) 'Shall the City of and the City of be consolidated [and the consolidated unit assume the debt of each secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said cities on the date of this referendum)] and any of said authorized but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and credit?

[ ] YES [ ] NO'

(3) 'Shall the City of and the County of be consolidated [and the consolidated unit assume the debt of each secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said city or county on the date of this referendum)] and any of said authorized but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and credit?

[ ] YES [ ] NO'

(c) The proposition submitted to the voters shall be substantially in one of the following forms:

(1) 'Shall the County of and the County of be consolidated?

[ ] YES [ ] NO'

(2) 'Shall the City of and the City of be consolidated?

[ ] YES [ ] NO'

(3) 'Shall the City of and the County of be consolidated?

[ ] YES [ ] NO'

(d) If the proposition is to consolidate two or more counties or to consolidate two or more cities, to be approved it must receive the votes of a majority of those voting in each of the counties or cities, as the case may be. If the proposition is to consolidate one or more cities with a county, to be approved it must receive the votes of a majority of those voting in the referendum. In addition, no governmental consolidation may become effective until enacted into law by the General Assembly.

(e) Subsection (b) of this section applies to any county that has (i) a population over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles. Subsection (c) of this section applies to all other counties. If any subsection or provision of this section is declared unconstitutional or invalid by the courts, it does not affect the validity of the section as a whole or any part other than the part so declared to be unconstitutional or invalid, provided that if the classifications in subsections (b) and (c) of this section are held unconstitutional or invalid then subsection (c) of this section is repealed and subsection (b) of this section shall be applicable uniformly to all counties."

Sec. 6. G.S. 160A-20(h) reads as rewritten:

"(h) As used in this section, the term 'unit of local government' means any of the following:

(1) A county.

(2) A city.

(3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

(4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent

federal decennial census and (ii) an area of less than 200 square miles.

(5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.

(6) A local school administrative unit (i) that is located in a county that has a population of over 90,000 according to the most recent federal decennial census and (ii) whose board of education is authorized to levy a school tax.

(7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.

(8) A consolidated city-county, as defined by G.S. 160B-2(1)."

Sec. 7. G.S. 162A-86 is amended by adding a new subsection to read:

"(a1) The governing board of a consolidated city-county, as defined by G.S. 160B-2(1), may create a water and sewer district pursuant to this Article. For the purposes of this Article, the term 'board of county commissioners' shall also mean the governing board of a consolidated city-county and the term 'county water and sewer district' also means a water and sewer district created by the governing board of a consolidated city-county."

Sec. 8. G.S. 162A-89 reads as rewritten:

"*§ 162A-89. Governing body of district; powers.*

(a) The board of commissioners of the county in which a county water and sewer district is created is the governing body of the district.

(b) The governing board of a consolidated city-county in which a water and sewer district is created is the governing body of the district."

Sec. 9. G.S. 159-7(b)(15) reads as rewritten:

"(15) 'Unit,' 'unit of local government,' or 'local government' is a municipal corporation that is not subject to the Executive Budget Act (Article 1 of Chapter 143 of the General Statutes) and that has the power to levy taxes, including a consolidated city-county, as defined by G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations."

Sec. 10. G.S. 159-44(4) reads as rewritten:

(4) 'Unit,' 'unit of local government,' or 'local government' means counties; cities, towns, and incorporated villages; consolidated city-counties, as defined by G.S. 160B-2(1); sanitary districts; mosquito control districts; hospital districts; merged school administrative units described in G.S. 115C-513; metropolitan sewerage districts; metropolican water districts; county water and sewer districts; regional public transportation authorities; and special airport districts."

Sec. 11. G.S. 159G-3(10) reads as rewritten:

"(10) 'Local government unit' means a county, city, town, incorporated village, consolidated city-county, as defined by G.S. 160B-2(1), including such a consolidated city-county acting with respect to an urban service district defined by a

consolidated city-county, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority or joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes."

Sec. 12. G.S. 159I-3(a)(13) reads as rewritten:

"(13) 'Unit of local government' or 'unit' means:

a. A unit of local government as defined in G.S. 159-44(4);

b. Any combination of units, as defined in G.S. 160A-460(2), entering into a contract or agreement with each other under G.S. 160A-461;

c. Any joint agency established under G.S. 160A-462; as any such section may be amended from time to time; ~~or~~

d. Any regional solid waste management authority created pursuant to ~~G.S. 153A-421.~~ G.S. 153A-421; or

e. A consolidated city-county as defined by G.S. 160B-2(1), including such a consolidated city-county acting with respect to an urban service district defined by a consolidated city-county."

Sec. 13. G.S. 105-164.14(c) is amended by adding a new subdivision to read:

"(2a) A consolidated city-county created pursuant to Article 2 or Article 5 of Chapter 160B of the General Statutes."

Sec. 14. G.S. 105-228.90(b) is amended by renumbering subdivision (1) as (1a) and by adding two new subdivisions to read:

"(1) City. -- A city as defined by G.S. 160A-1(2). The term also includes an urban service district defined by the governing board of a consolidated city-county, as defined by G.S. 160B-2(1).

(1b) County. -- Any one of the counties listed in G.S. 153A-10. The term also includes a consolidated city-county as defined by G.S. 160B-2(1)."

Sec. 15. G.S. 105-273(11) reads as rewritten:

"(11) 'Municipal corporation' and 'municipality' mean city, town, incorporated village, sanitary district, rural fire protection district, rural recreation district, mosquito control district, hospital district, metropolitan sewerage district, watershed improvement district, or other district or unit of local government by or for which ad valorem taxes are levied. The terms also include a consolidated city-county as defined by G.S. 160B-2(1)."

Sec. 16. G.S. 105-466 is amended by adding a new subsection to read:

"(b1) If the board of commissioners of a county has imposed the local sales and use tax authorized by this Article and any or all of the taxes authorized by Articles 40 and 42 of this Chapter, with or without a special election, and the county subsequently becomes part of a consolidated city-county, the taxes shall continue in effect unless and until repealed by the governing board of the consolidated city-county."

Sec. 17. G.S. 105-473(e) reads as rewritten:

"(e) ~~If the Secretary of Revenue collects and administers the tax in a taxing county, the~~ The board of county commissioners, upon adoption of said resolution, shall cause a certified copy of the resolution to be delivered immediately to the Secretary of Revenue, accompanied by a certified statement from the county board of elections, if applicable, setting forth the results of any special election approving the repeal of the tax in the county."

Sec. 18. G.S. 136-41.1(b) reads as rewritten:

"(b) For purposes of this section and of G.S. 136-41.2 and 136-41.3, urban service districts defined by the governing board of a consolidated city-county in which street services are provided by the consolidated ~~city-county~~ city-county, as defined by G.S. 160B-2(1), shall be considered eligible municipalities, and the allocations to be made thereby shall be made to the government of the consolidated city-county."

Sec. 19. If a concurrent resolution is adopted pursuant to G.S. 153A-405 prior to the effective date of this act, the concurrent resolution may be amended to include authorization or direction that the ballot question may include the assumption of obligations language and may also include the assumption of the right to issue authorized but unissued faith and credit debt language as provided by G.S. 153A-405.

Sec. 20. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Sec. 21. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1995.

H.B. 481 **CHAPTER 462**

AN ACT TO REQUIRE PARENTAL OR JUDICIAL CONSENT FOR AN UNEMANCIPATED MINOR'S ABORTION.

The General Assembly of North Carolina enacts:

Section 1. Article 1A of Chapter 90 of the General Statutes is amended by designating all the existing language as "Part 1.", and by adding a new Part to read:

"Part 2. Parental or Judicial Consent for Abortion.

"§ *90-21.6. Definitions.*

For the purposes of Part 2 only of this Article, unless the context clearly requires otherwise:

(1) 'Unemancipated minor' or 'minor' means any person under the age of 18 who has not been married or has not been emancipated pursuant to Article 56 of Chapter 7A of the General Statutes.

(2) 'Abortion' means the use or prescription of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant, for reasons other than to save the life or preserve the health of an unborn child, to remove a dead unborn child, or to deliver an unborn child prematurely, by accepted medical procedures in

order to preserve the health of both the mother and the unborn child.

"§ 90-21.7. *Parental consent required.*

(a) No physician licensed to practice medicine in North Carolina shall perform an abortion upon an unemancipated minor unless the physician or agent thereof or another physician or agent thereof first obtains the written consent of the minor and of:

(1) A parent with custody of the minor; or

(2) The legal guardian or legal custodian of the minor; or

(3) A parent with whom the minor is living; or

(4) A grandparent with whom the minor has been living for at least six months immediately preceding the date of the minor's written consent.

(b) The pregnant minor may petition, on her own behalf or by guardian ad litem, the district court judge assigned to the juvenile proceedings in the district court where the minor resides or where she is physically present for a waiver of the parental consent requirement if:

(1) None of the persons from whom consent must be obtained pursuant to this section is available to the physician performing the abortion or the physician's agent or the referring physician or the agent thereof within a reasonable time or manner; or

(2) All of the persons from whom consent must be obtained pursuant to this section refuse to consent to the performance of an abortion; or

(3) The minor elects not to seek consent of the person from whom consent is required.

"§ 90-21.8. *Procedure for waiver of parental consent.*

(a) The requirements and procedures under Part 2 of this Article are available and apply to unemancipated minors seeking treatment in this State.

(b) The court shall ensure that the minor or her guardian ad litem is given assistance in preparing and filing the petition and shall ensure that the minor's identity is kept confidential.

(c) The minor may participate in proceedings in the court on her own behalf or through a guardian ad litem. The court shall advise her that she has a right to court appointed counsel and shall provide her with counsel upon her request.

(d) Court proceedings under this section shall be confidential and shall be given precedence over other pending matters necessary to ensure that the court may reach a decision promptly. In no case shall the court fail to rule within seven days of the time of filing the application. This time limitation may be extended at the request of the minor. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor; the nature, possible consequences, and alternatives to the abortion; and any other evidence that the court may find useful in determining whether the parental consent requirement shall be waived.

(e) The parental consent requirement shall be waived if the court finds:

(1) That the minor is mature and well-informed enough to make the abortion decision on her own; or

(2) That it would be in the minor's best interests that parental consent not be required; or

(3) That the minor is a victim of rape or of felonious incest under G.S. 14-178.

(f) The court shall make written findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence be maintained. If the court finds that the minor has been a victim of incest, whether felonious or misdemeanor, it shall advise the Director of the Department of Social Services of its findings for further action pursuant to Article 44 of Chapter 7A of the General Statutes.

(g) If the female petitioner so requests in her petition, no summons or other notice may be served upon the parents, guardian, or custodian of the minor female.

(h) The minor may appeal an order issued in accordance with this section. The appeal shall be a de novo hearing in superior court. The notice of appeal shall be filed within 24 hours from the date of issuance of the district court order. The de novo hearing may be held out of district and out of session and shall be held as soon as possible within seven days of the filing of the notice of appeal. The record of the de novo hearing is a confidential record and shall not be open for general public inspection. The Chief Justice of the North Carolina Supreme Court shall adopt rules necessary to implement this subsection.

(i) No court costs shall be required of any minor who avails herself of the procedures provided by this section.

"§ *90-21.9. Medical emergency exception.*

The requirements of parental consent prescribed by G.S. 90-21.7(a) shall not apply when, in the best medical judgment of the physician based on the facts of the case before the physician, a medical emergency exists that so complicates the pregnancy as to require an immediate abortion, or when the conditions prescribed by G.S. 90-21.1(4) are met.

"§ *90-21.10. Penalty.*

Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of Part 2 of this Article shall be guilty of a Class 1 misdemeanor."

Sec. 2. G.S. 7A-523(a) is amended by adding a subdivision to read:

"(8) Proceedings involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes."

Sec. 3. G.S. 7A-451(a) is amended by adding a subdivision to read:

"(16) A proceeding involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding."

Sec. 4. G.S. 7A-675 is amended by adding a subsection to read:

"(j) Notwithstanding subsection (a) of this section, the court's entire record of a proceeding involving consent for an abortion on an unemancipated minor under Article 1A, Part 2 of Chapter 90 of the General

Statutes is not a matter of public record, shall be maintained separately from any juvenile record, shall be withheld from public inspection, and may be examined only by order of the court, by the unemancipated minor, or by the unemancipated minor's attorney or guardian ad litem."

Sec. 5. Notwithstanding any other State or local law to the contrary, no State or local government agency or entity shall deny eligibility for financial assistance under Aid to Families with Dependent Children to any infant or child on the basis that the mother of the infant or child was an unemancipated minor when the infant or child was born.

Sec. 6. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 20th day of July, 1995.

S.B. 180

CHAPTER 463

AN ACT TO MODIFY THE PAYMENT AND REPORTING REQUIREMENTS AND THE COLLECTION PROCEDURES FOR UNEMPLOYMENT CONTRIBUTIONS AND TO PROVIDE FOR A REDUCTION IN THESE CONTRIBUTIONS IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. Effective September 30, 1995, G.S. 96-9(a)(6) reads as rewritten:

"(6) If the amount of the contributions shown to be due after all credits is less than ~~one dollar ($1.00),~~ five dollars ($5.00), no payment need be made. If an employer has paid contributions, penalties, and/or interest in excess of the amount due, this shall be considered an overpayment and refunded provided no other debts are owed to the Commission by the employer. Overpayments of less than ~~one dollar ($1.00)~~ five dollars ($5.00) shall be refunded only upon receipt by the Chairman of a written demand for such refund from the employer. Nothing herein shall be construed to change or extend the limitation set forth in G.S. 96-10(e), (f), and (i)."

Sec. 2. Effective September 30, 1995, G.S. 96-9(a) is amended by adding the following two new subdivisions to read:

"(8) An employer who has filed reports with the Commission for at least three consecutive years and has not been liable for quarterly contributions under subdivision (6) of this subsection during the preceding calendar year may be given permission by the Chair of the Commission to file reports once a year on or before the last day of the month following the close of the calendar year in which the wages are paid. Permission to file a report annually may be revoked if the employer is found liable to the Commission for quarterly contributions under subdivision (6) of this subsection.

An employer who is granted permission to file annual reports must comply with 20 C.F.R. § 603.21 so that reporting of wages

and employment status are as effective and timely as the quarterly wage reporting system. This compliance includes the reporting of all changes in employment status and in wages of an employee to the Commission within 14 days of the occurrence and responding to all inquiries from the Commission as to wages paid to an employee in a year in which the employer is reporting on an annual basis within 14 days of the postmark of the inquiry. If an employer does not report or respond to an inquiry within 14 days, then the Commission will estimate wages paid to an employee based on the last report the employer filed with the Commission, and the employer will be liable for any charge based on the Commission's estimation of the wages paid to the employee.

(9) Employers who are granted permission under subdivision (8) of this subsection to file annual reports may be given permission to file reports by telephone. Employers who report by telephone must contact either the Field Tax Auditor who is assigned to the employer's account or the Unemployment Insurance Division in Raleigh and report the required information to that Auditor or to the Division by the date the report is due under subdivision (8) of this subsection."

Sec. 3. Effective for quarters beginning on or after March 31, 1996, G.S. 96-9(b)(3)d3., as enacted by Chapter 4 of the 1995 Session Laws, reads as rewritten:

"d3. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1995, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars ($800,000,000) on the computation ~~date.~~ date and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars ($800,000,000) on the computation date, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is: As Much As	But Less Than	Rate Schedules (%) A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
4.0%	4.2%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%
4.2%	4.4%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%
4.4%	4.6%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%	0.01%
4.6%	4.8%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%	0.01%	0.01%
4.8%	5.0%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%	0.01%	0.01%	0.01%
5.0%	&OVER	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%".

Sec. 4. G.S. 96-10(b)(1) reads as rewritten:

"(1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the Commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions, except petitions for judicial review under this Chapter and cases arising under the Workers' Compensation Law of this State; or, if any contribution imposed by this Chapter, or any portion thereof, and/or penalties duly provided for the nonpayment thereof shall not be paid within 30 days after the same become due and payable, and after due notice and reasonable opportunity for hearing, the Commission, under the hand of its chairman, may certify the same to the clerk of the superior court of the county in which the delinquent resides or has property, and additional

copies of said certificate for each county in which the Commission has reason to believe ~~such~~ the delinquent has property ~~located; such certificate and/or copies thereof so~~ located. If the amount of a delinquency is less than fifty dollars ($50.00), the Commission may not certify the amount to the clerk of court until a field tax auditor or another representative of the Commission personally contacts, or unsuccessfully attempts to personally contact, the delinquent and collect the amount due. A certificate or a copy of a certificate forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of ~~judgment~~, judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said delinquent may own in said county, with the same force and effect as a judgment rendered by the superior court. The Commission shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Commission, and when so forwarded and in the hands of such sheriff or agent of the Commission, shall have all the force and effect of an execution issued to such sheriff or agent of the Commission by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, the Commission may in its discretion withhold the issuance of said certificate or execution to the sheriff or agent of the Commission for a period not exceeding 180 days from the date upon which the original certificate is certified to the clerk of superior court. The Commission is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Commission in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the Commission, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Commission by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the Commission, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection and in such case no agent of the Commission shall have the authority to serve any executions or make any collections therein in such county. A return of such execution, or alias execution, shall be made to the Commission, together with all moneys collected thereunder, and when such order, execution, or alias is referred to the agent of the Commission for service the said agent of the Commission shall be vested with all the powers of the sheriff to the extent of serving such order, execution or alias and levying or collecting thereunder. The agent of the Commission to whom such order

or execution is referred shall give a bond not to exceed three thousand dollars ($3,000) approved by the Commission for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of executions. If any sheriff of this State or any agent of the Commission who is charged with the duty of serving executions shall willfully fail, refuse, or neglect to execute any order directed to him by the said Commission and within the time provided by law, the official bond of such sheriff or of such agent of the Commission shall be liable for the contributions, penalty, interest, and costs due by the employer."

Sec. 5. G.S. 96-10(g) reads as rewritten:

"(g) Upon the motion of the Commission, any employer refusing to submit any report required under this Chapter, after 10 days' written notice sent by the Commission by registered or certified mail to the employer's last known address, may be enjoined by any court of competent jurisdiction from hiring and continuing in employment any employees until such report is properly submitted. When an execution has been returned to the Commission unsatisfied, and the employer, after 10 days' written notice sent by the Commission by registered mail to the employer's last known address, refuses to pay the contributions covered by the execution, such employer shall upon the motion of the Commission be enjoined by any court of competent jurisdiction from hiring and continuing in employment any employees until such contributions have been paid.

~~There shall be added to the amount required to be shown as tax in the reports~~ An employer who fails to file a report within the required time shall be assessed a late filing penalty of five percent (5%) of the amount of ~~such tax if the failure is not~~ contributions due with the report for ~~more than one~~ each month ~~with an additional five percent (5%) for each additional month~~ or fraction ~~thereof during which such~~ of a month the failure ~~continues,~~ continues. The penalty may not ~~exceeding~~ exceed twenty-five percent (25%) of the ~~aggregate~~ amount of contributions due or five dollars ($5.00), whichever is greater. An employer who fails to file a report within the required time but owes no contributions shall not be assessed a penalty unless the employer's failure to file continues for more than 30 days."

Sec. 6. G.S. 96-10(j) reads as rewritten:

"(j) The Commission shall have the power to reduce or waive any penalty provided in G.S. 96-10(a) or 96-10(g). The late filing penalty under G.S. 96-10(g) shall be waived when the mailed report bears a postmark that discloses that it was mailed by midnight of the due date but was addressed or delivered to the wrong State or federal agency. The late payment penalty and the late filing penalty imposed by G.S. 96-10(a) and G.S. 96-10(g) shall be waived where the delay was caused by any of the following:

(1) The death or serious illness of the employer or a member of his immediate family, or by the death or serious illness of the person in the employer's organization responsible for the preparation and filing of the report;

(2) Destruction of the employer's place of business or business records by fire or other casualty;
(3) Failure of the Commission to furnish proper forms upon timely application by the employer, by reason of which failure the employer was unable to execute and file the report on or before the due date;
(4) The inability of the employer or the person in the employer's organization responsible for the preparation and filing of reports to obtain an interview with a representative of the Commission upon a personal visit to the central office or any local office for the purpose of securing information or aid in the proper preparation of the report, which personal interview was attempted to be had within the time during which the report could have been executed and filed as required by law had the information at the time been obtained;
(5) The entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or any of its allies, or the United Nations, provided that the entrance was unexpected and is not the annual two weeks training for reserves; and
(6) Other circumstances where, in the opinion of the Chairman, the Assistant Administrator, or their designees, the imposition of penalties would be inequitable.

In the waiver of any penalty, the burden shall be upon the employer to establish to the satisfaction of the Chairman, the Assistant Administrator, or their designees, that the delinquency for which the penalty was imposed was due to any of the foregoing facts or circumstances. Such waiver shall be valid and binding upon the Commission. ~~No employer shall receive a penalty waiver within 24 months succeeding its last penalty waiver.~~ The reason for any such reduction or waiver shall be made a part of the permanent records of the employing unit to which it applies."

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1995.

S.B. 182 **CHAPTER 464**

AN ACT TO PROVIDE THAT IF A CANDIDATE DIED BEFORE THE PRIMARY ELECTION, THE ESTATE OF THE CANDIDATE SHALL BE ENTITLED TO A REFUND OF THE FILING FEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-107(b) reads as rewritten:

"(b) Refund of Fees. -- If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section, withdraws his notice of candidacy within the period prescribed in G.S. 163-106(e), he shall be entitled to have the fee he paid refunded. If the fee was paid to the State Board of Elections, the chairman of that board shall cause a warrant to be drawn on the Treasurer of the State for the refund payment. If the fee

was paid to a county board of elections, the chairman of the Board shall certify to the county ~~accountant~~ finance officer that the refund should be made, and the county ~~accountant~~ finance officer shall make the refund in accordance with the provisions of the ~~County~~ Local Government Budget and Fiscal Control Act. If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the primary election provided by G.S. 163-1, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

If any person files a notice of candidacy and pays a filing fee to a board of elections other than that with which he is required to file under the provisions of G.S. 163-106(e), he shall be entitled to have the fee refunded in the manner prescribed in this subsection if he requests the refund before the date on which the right to file for that office expires under the provisions of G.S. 163-106(e)."

Sec. 2. Notwithstanding the provisions of G.S. 163-107(b) as enacted by Section 1 of this act, the personal representative of the estate of a candidate who died before the primary in 1994 will be entitled to a refund of the candidate's filing fee if application is made before January 1, 1996.

Sec. 3. This act is effective on and after January 1, 1994.

In the General Assembly read three times and ratified this the 20th day of July, 1995.

S.B. 407 **CHAPTER 465**

AN ACT TO EXEMPT TRAILERS FROM THE PAYMENT OF THE GLOBAL TRANSPARK TEMPORARY ZONE VEHICLE REGISTRATION TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 158-42(a) reads as rewritten:

"(a) Levy. -- The Commission may, by resolution, after not less than 10 days' public notice and a public hearing, levy an annual registration tax of five dollars ($5.00) on motor vehicles with a tax situs within the Zone. A tax levied under this section is in addition to any other motor vehicle license or registration tax.

The tax applies to vehicles required to pay a tax under G.S. ~~20-88~~ 20-88, except trailers, and G.S. 20-87(1), (2), (4), (5), (6), and (7). The tax situs of a motor vehicle for the purpose of this section is its ad valorem tax situs. If the vehicle is not subject to ad valorem tax, its tax situs for the purpose of this section is the ad valorem tax situs it would have if it were subject to ad valorem tax."

Sec. 2. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 20th day of July, 1995.

S.B. 57 CHAPTER 466

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON ALCOHOLIC BEVERAGE CONTROL AND TO MAKE OTHER CHANGES IN THE ABC LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-101 reads as rewritten:

"§ *18B-101. Definitions.*

As used in this Chapter, unless the context requires otherwise:

(1) 'ABC law' or 'ABC laws' means any statute or statutes in this Chapter or in Article 2C of Chapter 105, and the rules issued by the Commission under the authority of this Chapter.

(2) 'ABC permit' or 'permits' means any written or printed authorization issued by the Commission pursuant to the provisions of this Chapter, other than a purchase-transportation permit. Unless the context clearly requires otherwise, as in the provisions concerning applications for permits, 'ABC permit' or 'permit' means a presently valid permit.

(3) 'ABC system' means a local board and all ABC stores operated by it, its law-enforcement branch, and all its employees.

(4) 'Alcoholic beverage' means any beverage containing at least one-half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.

(5) 'ALE Division' means the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety.

(5a) 'Bailment surcharge' means the charge imposed on each case of liquor shipped from a Commission warehouse as provided in G.S. 18B-208. This bailment surcharge is in addition to the bailment charge imposed by G.S. 18B-804(b)(2).

(6) 'Commission' means the North Carolina Alcoholic Beverage Control Commission established under G.S. 18B-200.

(7) 'Fortified wine' means any wine made by fermentation from grapes, fruits, berries, rice, or honey, to which nothing has been added other than pure brandy made from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine, and which has an alcoholic content of not more than twenty-four percent (24%) alcohol by volume.

(8) 'Local board' means a city or county ABC board, or local board created pursuant to the provisions of G.S. 18B-703. A local board is an independent local political subdivision of the State. Nothing in this Chapter shall be construed as constituting a local board the agency of a city or county or of the Commission.

(9) 'Malt beverage' means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one-half of one percent (0.5%), and not more than six percent (6%), alcohol by volume.

(10) 'Mixed beverage' means either of the following:
a. A drink composed in whole or in part of spirituous liquor and served in a quantity less than the quantity contained in a closed package.
b. A premixed cocktail served from a closed package containing only one serving.

(11) 'Nontaxpaid alcoholic beverage' means any alcoholic beverage upon which the taxes imposed by the United States, this State, or any other territorial jurisdiction in which the alcoholic beverage was purchased have not been paid.

(12) 'Person' means an individual, firm, partnership, association, corporation, limited liability company, other organization or group, or other combination of individuals acting as a unit.

(13) 'Sale' means any transfer, trade, exchange, or barter, in any manner or by any means, for consideration.

(13a) 'Special ABC area' means an area that meets ~~all of~~ the following requirements:
Either:
a. 1. Has fewer than 500 permanent ~~residents.~~ residents;
~~b.~~ 2. Is located in a county that borders another state, that has at least one city that has approved the operation of an ABC store, and in which the sale of unfortified wine and malt beverages is permitted countywide or in at least two ~~cities.~~ cities; and
~~c.~~ 3. Contains more than 500 contiguous acres made up of privately-owned land and land owned by an association or a club that is exempt from income tax on its membership income under Article 4 of Chapter 105 of the General Statutes, has more than 200 members, was created for municipal and recreational purposes, and, for three or more years, has levied assessments or dues and provided municipal ~~services.~~ services; or
b. 1. Has more than 500 permanent residents;
2. Is located in a county:
I. Where ABC stores have heretofore been established but in which the sale of mixed beverages has not been approved;
II. That borders on a county that has approved the sale of alcoholic beverages countywide and contains an international airport; and
III. Borders on a county where ABC stores have heretofore been established by petition pursuant to law; and
3. Contains more than 500 contiguous acres made up of privately owned land and land owned by an association or a club that is exempt from income tax on its membership income under Article 4 of Chapter 105 of the General Statutes, has more than 200 members, was created for municipal and recreational

purposes, and, for three or more years, has levied assessments or dues and provided municipal services.

(14) 'Spirituous liquor' or 'liquor' means distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin and all other distilled spirits and mixtures of cordials, liqueur, and premixed cocktails, in closed containers for beverage use regardless of their dilution.

(14a) 'Tourism ABC establishment' means a restaurant or hotel that meets both of the following requirements:

a. Is located within 1.5 miles of the end of an entrance or exit ramp of a junction on a national scenic parkway designed to attract local, State, national, and international tourists between Milepost 305 and 460.

b. Is located in a county in which the on-premises sale of malt beverages or unfortified wine is authorized in at least one city.

(15) 'Unfortified wine' means wine that has an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet, or dextrose ~~sugar, and that has an alcoholic content of not more than seventeen percent (17%) alcohol by volume.~~ sugar."

Sec. 2. G.S. 18B-500(a) reads as rewritten:

"(a) Appointment. -- The Secretary of Crime Control and Public Safety shall appoint alcohol law-enforcement agents and other enforcement personnel. The Secretary of Crime Control and Public Safety may also appoint regular employees of the Commission as alcohol law-enforcement agents. Alcohol law-enforcement agents shall be designated as 'alcohol law-enforcement agents'."

Sec. 3. G.S. 18B-501(a) reads as rewritten:

"(a) Appointment. -- Except as provided in subsection (f), each local board shall hire one or more ABC enforcement officers. Local ABC enforcement officers shall be designated as 'ABC Officers'. The local board may designate one officer as the chief ABC officer for that board."

Sec. 4. G.S. 18B-501(f) reads as rewritten:

"(f) Contracts with Other Agencies. -- Instead of hiring local ABC officers, a local board may contract to pay its enforcement funds to a sheriff's department, city police department, or other local law-enforcement agency for enforcement of the ABC laws within the law-enforcement agency's territorial jurisdiction. Enforcement agreements may be made with more than one agency at the same time. When such a contract for enforcement exists, the officers of the contracting law-enforcement agency shall have the same authority to inspect under G.S. 18B-502 that an ABC officer employed by that local board would have. If a city located in two or more counties approves the sale of some type of alcoholic beverage pursuant to the provisions of G.S. 18B-600(e4), and there are no local ABC boards established in the city and one of the counties in which the city is located, the local ABC board of any county in which the city is located may enter into an enforcement agreement with the city's police department for enforcement of the ABC laws within the entire city, including that portion of

the city located in the county of the ABC board entering into the enforcement agreement."

Sec. 5. G.S. 18B-603(d) reads as rewritten:

"(d) Mixed Beverage Elections. -- If a mixed beverage election is held under G.S. 18B-602(h) and the sale of mixed beverages is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

(1) The Commission may issue mixed beverage permits.

(2) The Commission may issue on-premises malt beverage, unfortified wine, and fortified wine permits for establishments with mixed beverage permits, regardless of any other election or any local act concerning sales of those kinds of alcoholic beverages.

(3) The Commission may issue off-premises malt beverage permits to any establishment that meets the requirements under G.S. 18B-1001(2) in any township which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages. The Commission may also issue off-premises unfortified wine permits to any establishment that meets the requirements under G.S. 18B-1001(4) in any township which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages.

(4) The Commission may issue brown-bagging permits for private clubs and congressionally chartered veterans organizations but may no longer issue and may not renew brown-bagging permits for restaurants, hotels, and community theatres. A restaurant, hotel, or community theatre may not be issued a mixed beverage permit under subdivision (1) until it surrenders its brown-bagging permit.

(5) The Commission may continue to issue culinary permits for establishments that do not have mixed beverage permits. An establishment may not be issued a mixed beverage permit under subdivision (1) until it surrenders its culinary permit.

In any county in which the sale of mixed beverages has been approved in elections in at least three cities that, combined, contain more than two-thirds the total county population as of the most recent federal census, the county board of commissioners may by resolution approve the sale of mixed beverages throughout the county, and the Commission may issue permits as if mixed beverages had been approved in a county election.

If a county or city holds a mixed beverage election and an ABC store election at the same time and the voters do not approve the establishment of an ABC store, the Commission may not issue mixed beverages permits in that county or city."

Sec. 6. G.S. 18B-900(c) reads as rewritten:

"(c) Who Must Qualify; Exceptions. -- For an ABC permit to be issued to and held for a business, each of the following persons associated with that business must qualify under subsection (a):

(1) The owner of a sole proprietorship;

(2) Each member of a firm, association or general partnership;

(2a) Each general partner in a limited partnership;

(2b) Each manager and any member with a twenty-five percent (25%) or greater interest in a limited liability company;

(3) Each officer, director and owner of twenty-five percent (25%) or more of the stock of a corporation except that the requirement of subdivision (a)(1) does not apply to such an officer, director, or stockholder unless he is a manager or is otherwise responsible for the day-to-day operation of the business;

(4) The manager of an establishment operated by a corporation other than an establishment with only off-premises malt beverage, off-premises unfortified wine, or off-premises fortified wine permits;

(5) Any manager who has been empowered as attorney-in-fact for a nonresident individual or partnership."

Sec. 7. G.S. 18B-902(e) reads as rewritten:

"(e) Fee for Combined Applications. -- If application is made at the same time for retail malt beverage, unfortified wine and fortified wine permits for a single business location, the total fee for those applications shall be two hundred dollars ($200.00). If application is made at the same time for brown-bagging and special occasion permits for a single business location, the total fee for those applications shall be three hundred dollars ($300.00). If application is made at the same time for wine and malt beverage importer permits, the total fee for those applications shall be one hundred fifty dollars ($150.00). If application is made at the same time for wine and malt beverage wholesaler permits, the total fee for those applications shall be one hundred fifty dollars ($150.00). ~~If application is made in the same year for vendor representative permits to represent more than one vendor, only one fee shall be paid.~~ If application is made at the same time for nonresident malt beverage vendor and nonresident wine vendor permits, the total fee for those applications shall be fifty dollars ($50.00)."

Sec. 8. G.S. 18B-1000(8) reads as rewritten:

"(8) Sports club. -- An establishment substantially engaged in the business of providing an 18-hole golf course, a two or more tennis ~~court,~~ courts, or both. The sports club can either be open to the general public or to members and their guests. To qualify as a sports club, an establishment's gross receipts for club activities shall be greater than its gross receipts for alcoholic beverages. This provision does not prohibit a sports club from operating a restaurant. Receipts for food shall be included in with the club activity fee."

Sec. 9. A sports club that has only one tennis court and does not have an 18-hole golf course must have at least two tennis courts by October 1, 1996, to continue to qualify for ABC permits as a sports club. The ABC Commission shall revoke any permits previously issued to a sports club that does not meet the definition of sports club, as amended by Section 8 of this act, as of October 1, 1996.

Sec. 10. G.S. 18B-1001 reads as rewritten:

"*§ 18B-1001. Kinds of ABC permits; places eligible.*

When the issuance of the permit is lawful in the jurisdiction in which the premises is located, the Commission may issue the following kinds of permits:

(1) On-Premises Malt Beverage Permit. -- An on-premises malt beverage permit authorizes the retail sale of malt beverages for consumption on the premises and the retail sale of malt beverages in the manufacturer's original container for consumption off the premises. It also authorizes the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:
   a. Restaurants;
   b. Hotels;
   c. Eating establishments;
   d. Food businesses;
   e. Retail businesses;
   f. Private clubs;
   g. Convention centers;
   h. Community theatres.

   The permit may also be issued to certain breweries as authorized by G.S. 18B-1104(7).

(2) Off-Premises Malt Beverage Permit. -- An off-premises malt beverage permit authorizes the retail sale of malt beverages in the manufacturer's original container for consumption off the ~~premises.~~ premises and it authorizes the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:
   a. Restaurants;
   b. Hotels;
   c. Eating establishments;
   d. Food businesses;
   e. Retail businesses.

(3) On-Premises Unfortified Wine Permit. -- An on-premises unfortified wine permit authorizes the retail sale of unfortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises. It also authorizes the holder of the permit to ship unfortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:
   a. Restaurants;
   b. Hotels;
   c. Eating establishments;
   d. Private clubs;
   e. Convention centers;
   f. Cooking schools;
   g. Community ~~theatres[;]~~ theatres;

h. Winery.

(4) Off-Premises Unfortified Wine Permit. -- An off-premises unfortified wine permit authorizes the retail sale of unfortified wine in the manufacturer's original container for consumption off the ~~premises.~~ premises and it authorizes the holder of the permit to ship unfortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses. The permit may also be issued for a winery for sale of its own unfortified wine.

(5) On-Premises Fortified Wine Permit. -- An on-premises fortified wine permit authorizes the retail sale of fortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of fortified wine in the manufacturer's original container for consumption off the premises. It also authorizes the holder of the permit to ship fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:

a. Restaurants;
b. Hotels;
c. Private clubs;
d. Community ~~theatres[,]~~ theatres;
e. Wineries;
f. Convention centers.

(6) Off-Premises Fortified Wine Permit. -- An off-premises fortified wine permit ~~shall authorize~~ authorizes the retail sale of fortified wine in the manufacturer's original container for consumption off the ~~premises.~~ premises and it authorizes the holder of the permit to ship fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for food businesses. The permit may also be issued for a winery for sale of its own fortified wine.

(7) Brown-Bagging Permit. -- A brown-bagging permit authorizes each individual patron of an establishment, with the permission of the permittee, to bring up to eight liters of fortified wine or spirituous liquor, or eight liters of the two combined, onto the premises and to consume those alcoholic beverages on the premises. The permit may be issued for any of the following:

a. Restaurants;
b. Hotels;
c. Private clubs;
d. Community theaters;
e. Congressionally-chartered veterans organizations.

(8) Special Occasion Permit. -- A special occasion permit authorizes the host of a reception, party or other special occasion, with the permission of the permittee, to bring fortified wine and spirituous liquor onto the premises of the business and to serve the same to his guests. The permit may be issued for any of the following:

a. Restaurants;

b. Hotels;
c. Eating establishments;
d. Private clubs;
e. Convention centers.

(9) Limited Special Occasion Permit. -- A limited special occasion permit authorizes the permittee to bring fortified wine and spirituous liquor onto the premises of a business, with the permission of the owner of that property, and to serve those alcoholic beverages to the permittee's guests at a reception, party, or other special occasion being held there. The permit may be issued to any individual other than the owner or possessor of the premises. An applicant for a limited special occasion permit shall have the written permission of the owner or possessor of the property on which the special occasion is to be held.

(10) Mixed Beverages Permit. -- A mixed beverages permit authorizes the retail sale of mixed beverages for consumption on the premises. The permit also authorizes a mixed beverages permittee to obtain a purchase-transportation permit under G.S. 18B-403 and 18B-404, and to use for culinary purposes spirituous liquor lawfully purchased for use in mixed beverages. The permit may be issued for any of the following:
a. Restaurants;
b. Hotels;
c. Private clubs;
d. Convention centers;
e. Community theatres;
f. Nonprofit ~~and political organizations.~~ organizations; and
g. Political organizations.

(11) Culinary Permit. -- A culinary permit authorizes a permittee to possess up to 12 liters of either fortified wine or spirituous liquor, or 12 liters of the two combined, in the kitchen of a business and to use those alcoholic beverages for culinary purposes. The permit may be issued for either of the following:
a. Restaurants;
b. Hotels.
c. Cooking schools.

A culinary permit may also be issued to a catering service to allow the possession of the amount of fortified wine and spirituous liquor stated above at the business location of that service and at the cooking site. The permit shall also authorize the caterer to transport those alcoholic beverages to and from the business location and the cooking site, and use them in cooking.

(12) Mixed Beverages Catering Permit. -- A mixed beverages catering permit authorizes a hotel or a restaurant that has a mixed beverages permit to bring spirituous liquor onto the premises where the hotel or restaurant is catering food for an event and to serve the liquor to guests at the event.

(13) Guest Room Cabinet Permit. -- A guest room cabinet permit authorizes a hotel having a mixed beverages permit to sell to its

room guests, from securely locked cabinets, malt beverages, unfortified wine, fortified wine, and spirituous liquor. A permittee shall designate and maintain at least ten percent (10%) of the permittee's guest rooms as rooms that do not have a guest room cabinet. A permittee may dispense alcoholic beverages from a guest room cabinet only in accordance with written policies and procedures filed with and approved by the Commission. A permittee shall provide a reasonable number of vending machines, coolers, or similar machines on premises for the sale of soft drinks to hotel guests.

A guest room cabinet permit may be issued for any of the following:

a. A hotel located in a county subject to G.S. 18B-600(f).
b. A hotel located in a county that has a population in excess of 150,000 by the last federal census."

Sec. 11. G.S. 18B-1006(i)(4) reads as rewritten:

"(4) A boat shall have a home port in an area where issuance of any of the permits listed in subdivision (3) is legal, and all passengers shall enter the boat at the home port or at other ports listed on a preannounced itinerary. The boat's permits are valid during tours that leave and return to the boat's home port, and apply regardless of whether the boat crosses into an area where sales are not legal, if the boat docks only at a port listed on the preannounced itinerary, except in an emergency; and".

Sec. 12. G.S. 18B-1006(k) reads as rewritten:

"(k) Residential Private Club and Sports Club Permits. -- The Commission may issue the permits listed in G.S. 18B-1001, without approval at an election, to a residential private club or a sports club that is located in a county that meets the requirements set in any of the following subdivisions:

(1) Has a population of less than 45,000 by the last federal census, has at least three but not more than four cities that have approved the sale of malt beverages or unfortified wine, has only one city that has approved the on-premises sale of malt beverages, and has at least two cities that approved the operation of ABC stores before July 10, 1992.
(2) Borders a county that has called elections pursuant to G.S. 18B-600(f), and:
    a. Has not approved the issuance of permits, other than malt beverage permits, in unincorporated areas of the county, and has no more than three cities that approved the operation of ABC stores before July 10, 1992; or
    b. Both the county and the two cities within the county have approved the operation of ABC stores.
(3) Is bordered by four counties that have not approved the issuance of permits and have at least one city that has approved the operation of an ABC store.
(4) Has not approved the issuance of permits, has at least three cities that have approved the issuance of only either off-premises malt

beverage or both off-premises malt beverage and off-premises unfortified wine permits, and has only one city that, as of July 1, 1993, had approved the operation of an ABC store.

(5) Has not approved the issuance of any permits, borders one of the two largest counties in the State with more than 940 square miles, has an interstate highway running through it, and has at least six cities that have approved the sale of some malt beverages and unfortified wine and four of which have approved ABC systems.

(6) Borders a county that has approved the issuance of all permits and the operation of an ABC store, meets the county description of a special ABC area in G.S. 18B-101(13a)b., and, as of July 1, 1995, had at least five cities that had authorized the issuance of permits.

(7) Borders two states and, as of July 1, 1995, had only one city that had approved the issuance of permits.

The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the county."

Sec. 12.1. G.S. 18B-1006 is amended by adding a new section to read:

"(l) Marina. -- The Commission may issue the permits listed in G.S. 18B-1001, without approval at an election, to a restaurant operated as a part of a deep saltwater marina. A 'deep saltwater marina' is a marina that meets all of the following requirements:

(1) Is located in a county that borders the Atlantic Ocean and that has a beautification district which, as of July 1, 1995, had approved the issuance of all permits.

(2) Either is located on the Atlantic Ocean or a sound.

(3) Has at least 100 boat slips that are at least 40 feet in length."

Sec. 13. G.S. 18B-1007(b) reads as rewritten:

"(b) Handling Bottles. -- It shall be unlawful for a mixed beverages permittee or the permittee's agent or employee to do any of the following:

(1) Store any other spirituous liquor with liquor possessed for resale in mixed beverages or from a guest room cabinet.

(2) Refill any spirituous liquor container having a mixed beverages tax stamp with any other alcoholic beverage, or add to the contents of such a container any other alcoholic beverage.

(3) Transfer from one container to another a mixed beverages tax stamp.

(4) Possess any container of spirituous liquor not bearing a mixed beverages tax stamp, except for containers being brought onto the premises by the host of a private function under a special occasion permit."

Sec. 14. G.S. 18B-1301 reads as rewritten:

"§ *18B-1301. Definitions.*

(1) 'Supplier' means a brewer, ~~fermenter, processor,~~ bottler, ~~packager~~ or importer of malt beverages, including anyone who holds a brewery, malt beverages importer or nonresident malt beverages vendor permit.

(2) 'Wholesaler' means the holder of a malt beverages wholesaler permit."

Sec. 15. G.S. 18B-1303(a) reads as rewritten:

"(a) Filing. -- It is unlawful for a supplier to provide malt beverages to a wholesaler unless ~~a distribution agreement has been filed with~~ the Commission has received notification from the supplier ~~describing~~ designating the brands of the supplier which the wholesaler is authorized to sell and the territory in which such sales may take place. If the supplier sells several brands, the agreement need not apply to all brands. No supplier may provide by a distribution agreement for the distribution of a brand to more than one wholesaler for the same territory. A wholesaler shall not distribute any brand of malt beverage to a retailer whose premises are located outside the territory specified in the wholesaler's distribution agreement for that brand. A wholesaler may, however, with the approval of the Commission distribute malt beverages outside his designated territory during periods of temporary service interruption when requested to do so by the supplier and the wholesaler whose service is interrupted."

Sec. 16. G.S. 105-113.68(a)(12) reads as rewritten:

"(12) 'Unfortified wine' means wine that has an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet, or dextrose ~~sugar, and that has an alcoholic content of not more than seventeen percent (17%) alcohol by volume.~~ sugar."

Sec. 17. Section 6 of Chapter 734 of the 1969 Session Laws, as amended by Chapter 129 of the 1987 Session Laws, reads as rewritten:

"Sec. 6. Out of the gross profits derived from the operation of said alcoholic beverage control stores and after the payment of all costs and operating expenses and after retaining sufficient and proper working capital, the amount thereof to be determined by the Town of Sunset Beach Board of Alcoholic Control, said board shall further expend an amount as necessary for law enforcement purposes of not less than five per cent (5%) nor more than ten per cent ~~(10%) thereof, to be determined by quarterly audit, which~~ (10%). This amount shall supplement and not supplant the amount usually budgeted for such purposes by the Town of Sunset Beach. In the expenditure of said funds, the Town Board of Alcoholic Control shall employ one or more persons as law enforcement officer or officers to be appointed by and directly responsible to the said board. The person or persons so appointed shall, after taking the oath prescribed by law for peace officers, have the same powers and authorities within Brunswick County as other peace officers. And any such person or persons so appointed, or any other peace officer while in hot pursuit of anyone found to be violating the prohibition laws of this State, shall have the right to go into any other county of the State and arrest such defendant therein so long as such hot pursuit of such person shall continue, and the common law of hot pursuit shall be applicable to said offenses and such officer or officers. Any law enforcement officer appointed by the said Board of Alcoholic Control and any other peace officer are hereby authorized, upon request of the sheriff or other lawful officer in any other county, to go into such other county and assist in suppressing a violation of the prohibition laws therein, and while so

acting, shall have such powers as a peace officer as are granted to him in Brunswick County and be entitled to all the protection provided for said officer while acting in his own county.

Out of the net profits derived from the operation of said alcoholic beverage control stores, the Town of Sunset Beach Board of Alcoholic Control, shall, on a quarterly basis, pay over to the following named governing bodies, departments, boards, and agencies amounts equal to the percentages of the net profits which shall be expended by said governing bodies, departments, boards, and agencies for these purposes and none other as follows:

(a) Fifteen per cent (15%) to be given to the Calabash Volunteer Rescue Squad, Inc.

(b) Sixty-five per cent (65%) to be retained by the Town Board of Alcohol Control in a special fund until sufficient funds are available from this and other sources for the construction of a new building by the board and then this percentage of funds are to be distributed to the general fund of the Town of Sunset Beach.

(c) Twenty per cent (20%) to go to the Board of Education of Brunswick County for use at the Union Primary School, the Shallotte School, Waccamaw Primary School, and West Brunswick High School."

Sec. 17.1. Section 6 of Chapter 519 of the 1959 Session Laws, as amended by Chapter 331 of the 1961 Session Laws, Chapter 376 of the 1971 Session Laws, and Chapter 474 of the 1975 Session Laws, reads as rewritten:

"Sec. 6. Out of the gross profits derived from the operation of said alcoholic beverage control stores and after the payment of all costs and operating expenses and after retaining sufficient and proper working capital, the amount thereof to be determined by the Town of Shallotte Board of Alcoholic Control, said board shall further expend an amount as necessary for law enforcement purposes of not less than five per cent (5%) nor more than ten per cent ~~(10%) thereof, to be determined by quarterly audit, which~~ (10%). This amount shall supplement and not supplant the amount usually budgeted for such purposes by the Town of Shallotte. In the expenditure of said funds, the City Board of Alcoholic Control shall employ one or more persons as law enforcement officer or officers to be appointed by and directly responsible to the said board. The person or persons so appointed shall, after taking the oath prescribed by law for peace officers, have the same powers and authorities within Brunswick County as other peace officers. And any such person or persons so appointed, or any other peace officer while in hot pursuit of anyone found to be violating the prohibition laws of this State, shall have the right to go into any other county of the State and arrest such defendant therein so long as such hot pursuit of such person shall continue, and the common law of hot pursuit shall be applicable to said offenses and such officer or officers. Any law enforcement officer appointed by the said Board of Alcoholic Control and any other peace officer are hereby authorized, upon request of the sheriff or other lawful officer in any other county, to go into such other county and assist in suppressing a violation of the prohibition laws therein, and while so acting, shall have such powers as a peace officer as are granted to him in

Brunswick County and be entitled to all the protection provided for said officer while acting in his own county.

Out of the net profits derived from the operation of said alcoholic beverage control stores, the Town of Shallotte Board of Alcoholic Control shall, on a quarterly basis, pay over to the following named governing bodies, departments, boards, and agencies amounts equal to the percentages of the net profits which shall be expended by said governing bodies, departments, boards, and agencies for these purposes and none other as follows:

(a) 5% to Union Primary School
(b) 5% to Shallotte Middle School
(c) 10% to West Brunswick High School
(d) 80% to the General Fund of the Town of Shallotte."

Sec. 18. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 20th day of July, 1995.

S.B. 136 **CHAPTER 467**

AN ACT TO AGAIN EXTEND EXPIRING PROVISIONS.

The General Assembly of North Carolina enacts:

SALARIES/GOVERNMENT EMPLOYEES

Section 1. Section 2 of Chapter 358 of the 1995 Session Laws, as amended by Chapter 437 of the 1995 Session Laws, reads as rewritten:

"Sec. 2. (a) The salary schedules and specific salaries established by or under Sections 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.9(a), 7.9(b), 7.10, 7.11, 7.12, 7.13, 19.6, or 19.7 of Chapter 769 of the 1993 Session Laws shall remain until ~~July 21,~~ July 28, 1995, at the level set by or under those sections as of June 30, 1995.

(b) No person may receive a salary increase under G.S. 7A-102(c), 126-7 or 20-187.3(a) prior to ~~July 21,~~ July 28, 1995. No State employee or officer may prior to ~~July 21,~~ July 28, 1995, receive a merit increase or annual increment. No employee or officer subject to the teacher salary schedule or the school-based administrator salary schedule shall receive an increment until ~~July 21,~~ July 28, 1995."

CONTINUE MEDIATED SETTLEMENT PILOT

Sec. 2. (a) G.S. 7A-38(o), as amended by Chapters 358 and 437 of the 1995 Session Laws, reads as rewritten:

"(o) Report on pilot program. The Administrative Office of the Courts shall file a written report with the General Assembly on the evaluation of the pilot program on or before May 1, 1995. The pilot program shall terminate on ~~July 21,~~ July 28, 1995."

(b) Section 3(b) of Chapter 358 of the 1995 Session Laws, as amended by Chapter 437 of the 1995 Session Laws, reads as rewritten:

"(b) Notwithstanding the provisions of G.S. 7A-38(n), the Administrative Office of the Courts may use funds available to the Judicial Department from

July 1, 1995, to ~~July 21,~~ July 28, 1995, for the purpose of operating the pilot program."

EXTEND PUBLIC HEALTH STUDY COMMISSION

Sec. 3. Section 8.1 of Chapter 771 of the 1993 Session Laws, as amended by Chapters 358 and 437 of the 1995 Session Laws, reads as rewritten:

"Sec. 8.1. This act is effective upon ratification. Part II of this act is repealed on ~~July 21,~~ July 28, 1995."

EXTEND BEAVER DAMAGE CONTROL

Sec. 4. Subsection (h) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws, by Section 27.3 of Chapter 769 of the 1993 Session Laws, and by Chapters 358 and 437 of the 1995 Session Laws, reads as rewritten:

"(h) Subsections (a) through (d) of this section expire ~~July 21,~~ July 28, 1995."

EXTEND THE SUNSET FOR THE MEDIATION PROGRAM FOR THE INDUSTRIAL COMMISSION

Sec. 5. (a) Section 5 of Chapter 399 of the 1993 Session Laws, as amended by Chapters 358 and 437 of the 1995 Session Laws, reads as rewritten:

"Sec. 5. Section 3 of this act is effective upon ratification. Sections 1, 2, and 4 of this act become effective October 1, 1993, only if the General Assembly appropriates funds to implement the purpose of these sections, expire ~~July 21,~~ July 28, 1995, and apply to claims pending on or filed after the effective date."

(b) Section 5.4 of Chapter 679 of the 1993 Session Laws, as amended by Chapters 358 and 437 of the 1995 Session Laws, reads as rewritten:

"Sec. 5.4. Subsection (c) of G.S. 97-80 shall expire ~~July 21,~~ July 28, 1995, in accordance with the provisions of Chapter 399 of the 1993 Session Laws, unless the General Assembly amends Chapter 399 of the 1993 Session Laws to provide otherwise."

Sec. 6. Section 9 of Chapter 358 of the 1995 Session Laws, as amended by Chapter 437 of the 1995 Session Laws, reads as rewritten:

"Sec. 9. This act is effective upon ratification, but Sections 2 and 3 and Sections ~~5~~ 6 through 8 expire ~~July 21,~~ July 28, 1995."

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1995.

S.B. 121 **CHAPTER 468**

AN ACT TO REVISE THE PROCEDURES FOR ASSESSMENTS OF INHERITANCE TAX FOLLOWING A FEDERAL DETERMINATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-29 reads as rewritten:

"§ *105-29. Uniform valuation.*

(a) If the value of any estate taxed under this schedule shall have been assessed and fixed by the federal government for the purpose of determining the federal taxes due thereon prior to the time the report from the executor or administrator is made to the Secretary of Revenue under the provisions of this Article, the amount or value of such estate so fixed, assessed, and determined by the federal government shall be stated in such report. If the assessment of the estate by the federal government shall be made after the filing of the report by the executor or administrator with the Secretary of Revenue, as provided in this Article, the said executor or administrator shall, within 30 days after receipt of notice of the final determination by the federal government of the value or amount of said estate as assessed and determined for the purpose of fixing federal taxes thereon, make report of the amount so fixed and assessed by the federal government, under oath or affirmation, to the Secretary of Revenue. If the amount of said estate as assessed and fixed by the federal government shall be in excess of that theretofore fixed or assessed under this schedule for the purpose of determining the amount of taxes due the State from said estate, then the Secretary of Revenue shall reassess said estate and fix the value thereof at the amount fixed, assessed, and determined by the federal government, unless the said executor or administrator shall, within 30 days after notice to him from the Secretary of Revenue, show cause why the valuation and assessment of said estate as theretofore made should not be changed or increased. If the valuation placed upon said estate by the federal government shall be less than that theretofore fixed or assessed under this Article, the executor or administrator may, within 30 days after filing his return of the amount so fixed or assessed by the federal government, file with the Secretary of Revenue a petition to have the value of said estate reassessed and the same reduced to the amount as fixed or assessed by the federal government. In either event the Secretary of Revenue shall proceed to determine, from such evidence as may be brought to his attention or which he shall otherwise acquire, the correct value of the said estate, and if the valuation is changed, he shall reassess the taxes due by said estate under this Article and notify the executor or administrator of such fact. In the event the valuation of said estate shall be decreased and if there shall have been an overpayment of the tax in the amount of three dollars ($3.00) or more, the Secretary of Revenue shall, within 60 days after the final determination of the value of said estate and the assessment of the correct amount of tax against the same, refund the amount of such excess tax theretofore paid. In the event that the amount of such overpayment is less than three dollars ($3.00) the overpayment shall be refunded upon receipt by the Secretary of Revenue of a written demand for such refund from the taxpayer. No overpayment shall be refunded, irrespective of whether upon discovery or receipt of written demand if such discovery is not made or such demand is not received within three years from the date set by the statute for the filing of the return, or within six months after the date of the final determination of the federal estate tax liability, or within six months from the date of the payment of the tax alleged to be an overpayment, whichever is the later.

~~(b) If the executor or administrator shall fail to file with the Secretary of Revenue the return under oath or affirmation, stating the amount or value at which the estate was assessed by the federal government as provided for in this section, the Secretary of Revenue shall assess and collect from the executor or administrator a penalty equal to twenty-five percent (25%) of the amount of any additional tax which may be found to be due by such estate upon reassessment and reappraisal thereof, which penalty shall under no condition be less than twenty-five dollars ($25.00) or more than five hundred dollars ($500.00) and which cannot be remitted by the Secretary of Revenue except for good cause shown. The Secretary of Revenue is authorized and directed to confer quarterly with the Department of Internal Revenue of the United States government to ascertain the value of estates in North Carolina which have been assessed for taxation by the federal government, and he shall cooperate with the said Department of Internal Revenue, furnishing to said Department such information concerning estates in North Carolina as said Department may request.~~

When filing an inheritance tax return, the personal representative of an estate must report as the value of the estate the value that is reported on an estate tax return filed for the estate under the Code. If the federal government does not correct or otherwise determine the value of an estate reported on an estate tax return, the Secretary may determine the value based on evidence of any kind that becomes available to the Secretary from any source.

If the federal government corrects or otherwise determines the value of an estate reported on an estate tax return, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an inheritance tax return with the Secretary reflecting the corrected or determined value. The Secretary must adopt the value as corrected or determined by the federal government for federal estate tax purposes. The Secretary shall assess and collect any additional tax due on the transfer of property in the estate as provided in Article 9 of this Chapter and shall refund any overpayment of tax as provided in Article 9 of this Chapter. A personal representative who fails to report a federal correction or determination is subject to the penalties in G.S. 105-236 and forfeits the right of the estate to any refund due by reason of the determination."

Sec. 2. G.S. 105-241.1(e) reads as rewritten:

"(e) Statute of Limitations. -- The Secretary may propose an assessment of tax due from a taxpayer at any time if (i) the taxpayer did not file a proper application for a license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the tax. If a taxpayer files a return reflecting a federal determination as provided in G.S. 105-29, 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must propose an assessment of any tax due within one year after the return is filed or within three years of when the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the required return, the Secretary must propose an assessment of any tax due within three years after the date the Secretary received the final

report of the federal determination. If a taxpayer forfeits a tax credit pursuant to G.S. 105-163.014, the Secretary must assess any tax or additional tax due as a result of the forfeiture within three years after the date of the forfeiture. In all other cases, the Secretary must propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later. If the Secretary proposes an assessment of tax within the time provided in this section, the final assessment of the tax is timely.

A taxpayer may make a written waiver of any of the limitations of time set out in this subsection, for either a definite or an indefinite time. If the Secretary accepts the taxpayer's waiver, the Secretary may propose an assessment at any time within the time extended by the waiver."

Sec. 3. This act becomes effective August 1, 1995, and applies to assessments of taxes for which the statute of limitations had not expired on or before August 1, 1995.

In the General Assembly read three times and ratified this the 24th day of July, 1995.

S.B. 630 **CHAPTER 469**

AN ACT TO PROVIDE FOR BILLING FEES FOR STRUCTURAL AND NATURAL STORMWATER AND DRAINAGE SYSTEMS IN CUMBERLAND COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-277 is amended by adding a new subsection to read:

"(a2) A county may bill the rents, rates, fees, charges, and/or penalties for a structural and/or natural stormwater and drainage system that is a public enterprise with the property taxes. However, the rents, rates, fees, charges, and/or penalties so billed may be collected only as authorized by subsection (b) of this section. This subsection applies to Cumberland County only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of July, 1995.

H.B. 914 **CHAPTER 470**

AN ACT TO MODIFY THE APPOINTMENT AND CONDITIONS OF OFFICE OF MEMBERS OF THE STATE BOARD OF COMMUNITY COLLEGES AND BOARDS OF TRUSTEES OF COMMUNITY COLLEGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115D-12 reads as rewritten:

"*§ 115D-12. Each institution to have board of trustees; selection of trustees.*

(a) Each community college established or operated pursuant to this Chapter shall be governed by a board of trustees consisting of 13 members, or of additional members if selected according to the special procedure prescribed by the third paragraph of this subsection, who shall be selected by the following agencies.

Group One -- four trustees, elected by the board of education of the public school administrative unit located in the administrative area of the institution. If there are two or more public school administrative units, whether city or county units, or both, located within the administrative area, the trustees shall be elected jointly by all of the boards of education of those units, each board having one vote in the election of each trustee, except as provided in G.S. 115D-59. No board of education shall elect a member of the board of education or any person employed by the board of education to serve as a trustee, however, any such person currently serving on a board of trustees shall be permitted to fulfill the unexpired portion of the trustee's current term.

Group Two -- four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is composed of two or more counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee. Provided, also, the county commissioners of the county in which the community college has established a satellite campus may elect an additional two members if the board of trustees of the community college agrees. No more than one trustee from Group Two may be a member of a board of county commissioners. Should the boards of education or the boards of commissioners involved be unable to agree on one or more trustees the senior resident superior court judge in the superior court district or set of districts as defined in G.S. 7A-41.1 where the institution is located shall fill the position or positions by appointment.

Group Three -- four trustees, appointed by the Governor.

Group Four -- the president of the student government or the chairman of the executive board of the student body of each community college established pursuant to G.S. 115D shall be an ex officio nonvoting member of the board of trustees of each said institution.

(b) All trustees shall be residents of the administrative area of the institution for which they are selected or of counties contiguous thereto with the exception of members provided for in G.S. 115D-12(a), Group Four.

(b1) No person who has been employed full time by the community college within the prior 5 years and no spouse or child of a person currently employed full time by the community college shall serve on the board of trustees of that college.

(c) Vacancies occurring in any group for whatever reason shall be filled for the remainder of the unexpired term by the agency or agencies authorized to select trustees of that group and in the manner in which regular selections are made. Should the selection of a trustee not be made by the agency or agencies having the authority to do so within 60 days after the date on which a vacancy occurs, whether by creation or expiration of a term

or for any other reason, the Governor shall fill the vacancy by appointment for the remainder of the unexpired term."

Sec. 2. G.S. 115D-19(b) reads as rewritten:

"(b) A board of trustees may declare vacant the office of a member who does not attend three consecutive, scheduled meetings without justifiable excuse. A board of trustees may also declare vacant the office of a member who, without justifiable excuse, does not participate within six months of appointment in a trustee orientation and education session sponsored by the North Carolina Association of Community College Trustees. The board of trustees shall notify the appropriate appointing authority of any vacancy."

Sec. 3. G.S. 115D-2.1(b)(4)f. reads as rewritten:

"f. At each session of the General Assembly held in an odd-numbered year, the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall assign to either a standing or a special committee of that house the duty of receiving from the members of that house nominations of persons to be considered by that house for election to the State Board. The chairmen of the two committees shall jointly determine a common final date for receiving nominations from members of that house, and a common date for reporting to their respective houses their nominations for the State Board. Each committee shall screen the proposed candidates for nomination as to their qualifications, background, lack of statutory disabilities, and willingness and ability to serve if elected. Each Senator and each Representative may nominate only one candidate. When the nominating process is closed, each committee shall list all candidates and shall separately vote "aye" or "no" on each candidate to determine whether that person shall be listed as a nominee of the committee. The verbal vote of a majority of those members of the committee present and voting shall constitute one nominee of the committee. An individual cannot be a candidate for nomination to more than one place. If a sufficient number of candidates ~~are~~ is submitted to ~~the committee of the House of Representatives then that committee shall nominate at least two persons for each place to be filled by the House of Representatives,~~ each committee, then each committee shall nominate at least two persons for each place to be filled by that chamber, otherwise ~~that~~ each committee shall nominate at least one person for each place to be filled by each of the House of Representatives and the Senate. ~~The committee of the Senate shall nominate at least two persons for each place to be filled by the Senate.~~ No person may simultaneously be a candidate for election by both houses, and if one is nominated in both houses, he shall determine by which house he shall be nominated and so advise the chairman of both committees. The two houses shall, by joint resolution, fix a common date and time for the election of members of the State Board. At the election

session in each house, the committee shall report its list of nominees with the term of office indicated for each nominee. The ballot in the House of Representatives shall also include the names of all other persons nominated by a member of that house who are determined by the committee to be qualified for the offices, with the committee's list of nominees being clearly set out on the ballot. No additional nominations shall be received from the floor. Each house shall then proceed to an election of the State Board. In order to be chosen, a nominee shall receive the votes of a majority of all members present and voting.

When each house has chosen one person for each place to be filled on the State Board, the chairman of the committee shall make a motion for the simultaneous election of those persons by that house to the indicated positions and for the indicated terms. The vote shall then be called electronically. If a majority of those voting shall vote "aye," persons named in the motion shall be declared to have been elected. Each house may adopt rules consistent with this section with respect to the election by that house of members of the State Board."

Sec. 4. G.S. 115D-2.1(d) reads as rewritten:

"(d) No member of the General Assembly, no officer or employee of the State, and no officer or employee of an institution under the jurisdiction of the State Board and no spouse of any of those persons, shall be eligible to serve on the State Board. Furthermore, no person who within the prior 5 years has been an employee of the Department of Community Colleges shall be eligible to serve on the State Board."

Sec. 5. This act is effective upon ratification and shall apply to terms beginning on or after that date except Section 2 shall apply to terms beginning after June 30, 1995.

In the General Assembly read three times and ratified this the 24th day of July, 1995.

S.B. 931 **CHAPTER 471**

AN ACT TO PROVIDE SAFEGUARDS TO REDUCE THE CHANCES AND LESSEN THE EFFECTS OF WORKERS' COMPENSATION SELF-INSURANCE INSOLVENCIES AND APPROPRIATE FUNDS TO IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-93 reads as rewritten:

"*§ 97-93. Employers required to carry insurance or prove financial ability to pay for benefits; employers required to post notice; self-insured employers regulated by Commissioner of Insurance.*

(a) Every employer subject to the provisions of this Article relative to the payment of compensation shall either:

(1) Insure and keep insured his liability under this Article in any authorized corporation, association, organization, or in any mutual insurance association formed by a group of employers so authorized; or

(2) Furnish to the Commissioner of Insurance satisfactory proof of the employer's financial ability, either alone or through membership in a group ~~comprising~~ of two or more employers who are members of the same trade or professional association and who agree to pool their liabilities under this Article, to directly pay the compensation in the amount and manner and when due as provided for in this Article. The trade or professional association must have been incorporated in North Carolina and in existence at least five years prior to the date of application to the Commissioner of Insurance to form a self-insurer's fund and shall submit a written determination from the Internal Revenue Service that it is exempt from taxation under 26 U.S.C. § 501(c).

A group organized and approved under this subdivision prior to July 1, 1995, is not required to consist of employers of the same trade or professional association, have existed for five years, have been incorporated in North Carolina, or furnish the determination of tax-exempt status under 26 U.S.C. § 501(c).

(b) In the case of subdivision (a)(2) of this section, the Commissioner of Insurance may require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred. Any individual employer or group of employers who furnish proof of financial ability under subdivision (a)(2) of this section shall be governed in all respects by this Article and by rules adopted by the Commissioner of Insurance.

(c) Payment of dividends to the members of any group of employers who agree to pool their liabilities under subdivision (a)(2) of this section shall not be contingent upon the maintenance or continuance of membership in such pools.

(d) Groups ~~comprising~~ of two or more employers who agree to pool their liabilities under subdivision (a)(2) of this section are ~~subject~~ subject, in addition to the provisions cited in G.S. 58-2-145(a), to G.S. 58-2-165, ~~58-3-80,~~ 58-6-25, 58-7-50, 58-7-55, 58-7-140, 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-177, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, ~~58-7-190,~~ 58-7-192, 58-7-193, 58-7-195, 58-7-197, 58-7-200, and Articles 13, 19, 30, and 34 of Chapter 58 of the General Statutes.

(e) Every employer who is in compliance with the provisions of subsection (a) of this section shall post in a conspicuous place in places of employment a notice stating that employment by this employer is subject to the North Carolina Workers' Compensation Act and stating whether the employer has a policy of insurance against liability or qualifies as a self-insured employer. In the event the employer allows its insurance to lapse or ceases to qualify as a self-insured employer, the employer shall, within five working days of this occurrence, remove any notices indicating otherwise."

Sec. 2. G.S. 58-2-145 reads as rewritten:

"§ 58-2-145. Examination. ~~financial statement, and records~~ *licensing of claims adjusters, calculation of rates, and deviation from rates of employers self-insuring for workers' compensation.*

(a) The provisions of G.S. ~~58-2-131 through G.S. 58-2-133,~~ 58-2-131, 58-2-132, 58-2-133(a), (b), and (d), 58-2-150, 58-2-155, ~~58-2-165,~~ 58-2-180, 58-2-185, 58-2-190, 58-2-200, ~~and~~ 58-6-5 and 58-6-25 apply to employers and employer groups that furnish proof of financial responsibility to the Commissioner under G.S. 97-93(a)(2) and to persons that administer workers' compensation self-insurance for those ~~employers.~~ employers and employer groups.

(b) A person adjusting workers' compensation claims for a self-insured employer or self-insured employer group must have an adjuster's license under Article 33 of this Chapter.

(c) Each self-insured employer group must determine its individual member employers' premiums or contributions using the current rates and classifications filed by the North Carolina Rate Bureau and approved by the Commissioner under Article 36 of this Chapter. Deviations from these rates or classifications are permitted only in accordance with Article 36 of this Chapter, except that no deviation is required to be filed with the Rate Bureau.

The Commissioner shall approve a request filed for a deviation to reduce premiums or contributions or provide discounts if the filed request is accompanied by competent, independent financial and actuarial information. Despite the provisions of G.S. 58-36-30(c), a deviation shall not be required to apply uniformly to all classifications. The Commissioner may deny a filed request for a deviation only if he finds, after notice and a public hearing, that the deviation would result in a hazardous financial condition to the group, based on financial, actuarial or other information. The public hearing shall be held within 45 days after the requested deviation is filed in its entirety, and the Commissioner shall give at least 14 days' notice of the hearing to the person filing the request and to other persons designated by the Commissioner. The Commissioner shall make a determination as expeditiously as reasonably practicable after the conclusion of the hearing, provided that the request shall be deemed approved unless denied within 60 days after it was filed in its entirety.

'Hazardous financial condition', for purposes of this subsection, means that, based on its present or reasonably anticipated financial condition, a group, although not yet financially impaired or insolvent, is unlikely to be able:

(1) To meet obligations with respect to known claims and reasonably anticipated claims; or

(2) To pay other obligations in the normal course of business.

(d) The Commissioner shall adopt rules to ensure adequate disclosure by employer groups and their agents or administrators of (i) the possibility of assessments against members of the employer groups to satisfy their joint and several liability for claims and (ii) information about specific and aggregate insurance carried by the employer group.

(e) For purposes of this section, 'self-insured employer group' means a group that meets the requirements of G.S. 97-93(a)(2)."

Sec. 3. G.S. 58-30-5 reads as rewritten:

"*§ 58-30-5. Persons covered.*

The proceedings authorized by this Article may be applied to:

(1) All insurers who are doing, or have done, an insurance business in this State, and against whom claims arising from that business may exist now or in the future.

(2) All insurers who purport to do an insurance business in this State.

(3) All insurers who have insureds resident in this State.

(4) All persons organized or in the process of organizing with the intent to do an insurance business in this State.

(5) All persons subject to Articles 65 through 67 of this Chapter; except to the extent there is a conflict between the provisions of this Article and the provisions of those Articles, in which case those Articles will govern.

(6) Self-insured group workers' compensation funds organized under G.S. 97-93(a)(2)."

Sec. 4. G.S. 58-30-10(7) reads as rewritten:

"(7) 'Domestic guaranty association' means the Postassessment Insurance Guaranty Association in Article 48 of this Chapter, as amended; the ~~Workers' Compensation Security Funds in Article 3 of Chapter 97 of the General Statutes, as amended~~; the North Carolina Self-Insurance Guaranty Association in Article 4 of Chapter 97 of the General Statutes; the Life and Accident and Health Insurance Guaranty Association in Article 62 of this Chapter, as amended; or any other similar entity hereafter created by the General Assembly for the payment of claims of insolvent insurers."

Sec. 5. G.S. 58-30-10(14) reads as rewritten:

"(14) 'Insurer' means any entity licensed under Articles 7, 16, ~~or 26 of this Chapter and under Articles 65 through 67~~ 26, 65, or 67 of this Chapter and any employer that has furnished to the Commissioner satisfactory proof of its financial responsibility under G.S. 97-93(a)(2)."

Sec. 6. There is appropriated from the Department of Insurance Fund established in G.S. 58-6-25 the sum of eight hundred ninety-one thousand thirty dollars ($891,030) for fiscal year 1995-96 and the sum of eight hundred one thousand thirty dollars ($801,030) for fiscal year 1996-97 for the expenses of administering the Department's self-insured workers' compensation program.

Sec. 7. Section 6 of this act and this section are effective July 1, 1995. G.S. 58-2-145(c), as enacted in Section 2 of this act, becomes effective January 1, 1996, and applies to policy years beginning on or after that date. The remainder of this act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 25th day of July, 1995.